2023:BHC-NAG:15639

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 588 of 2022

Ankush Ramaji Kadu

Versus

Sangita Gopichand Sahare and others

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri R.S.Nagpure, Advocate for the petitioner.
Shri N.B.Bargat, Advocate for the respondent no.1.
Shri Akash H. Matewar Advocate h/f Shri A.K.Neware, Advocate for the respondent nos. 3 to 6.
Shri Deepak Thakare, Addl.G.P. for the respondent nos. 7 to 10.

CORAM : ANIL S. KILOR, J.
DATED : 26th OCTOBER, 2023.

Heard.

2. The order dated 8th December, 2021 passed by the learned Additional Commissioner, Nagpur in Revision No. 60/RTS-64/2020 allowing the revision application, is under challenge in this writ petition.

3. In the revision filed before the learned Additional Commissioner, Nagpur, the order dated 20th October, 2014 passed by the learned Additional Collector, Nagpur was under challenge.

4. It is also not in dispute that the revision was filed beyond the period of five years from the date of the order of the learned Additional Collector, Nagpur.

5. The revision was filed under Section 257 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "MLR Code, 1966"). The proviso to sub-section (1) of Section 257 reads thus:

> **257 Power of State Government and of certain Revenue and Survey Officers to call for and examine records and proceedings of subordinate officers.**
> (1) ...
> [Provided that, no such proceedings under this sub-section or sub-section (2) shall be initiated by any revenue or survey officer after expiry of a period of five years from the date of decision or order of the subordinate officer [except with the previous permission of the State Government]

6. In the light of the above referred proviso the petitioner raised a preliminary objection to the tenability of the revision in para one of the reply which reads thus:

> "1. That by virtue of the instant revision the applicant has challenged the impugned order passed on 20/10/2014 by learned additional collector Nagpur in revenue appeal no. 96/RTS/64/2010-2011 and 97/RTS/64/2010-2011, mouza Nari, Tq. and Dist. Nagpur. The instant revision in preferred under section 257 of the Maharashtra Land Revenue Code. Thus, in view of the proviso of section 257 the no such proceeding is maintainable after expiry of a period of five year from the date of the date of

> decision or order of the subordinate officer except with the permission of the state government."

7. It is apparent on the face of the impugned order dated 8th December, 2021 that the learned Additional Commissioner, Nagpur has discarded and ignored such preliminary objection and decided the matter on merit. There is no whisper in the order about any such objection.

8. In the circumstances, I am of the opinion that the learned Additional Commissioner, Nagpur has committed error by entering into the merits of the matter without dealing with the preliminary objection.

9. Hence, the only option left with this Court is to remand the matter back to the learned Additional Commissioner, Nagpur for deciding the revision afresh after considering the preliminary objection and after hearing both the parties. Accordingly, I pass the following order.

i. The writ petition is partly allowed;

ii. The order dated 8th December, 2021 passed by the Additional Commissioner, Nagpur is hereby quashed and set aside.

iii. The Additional Commissioner, Nagpur is directed to decide the revision after hearing both the parties and dealing with the issue of preliminary objection raised by the petitioner to the tenability of the revision within two months from the date of appearance of the parties.

iv. The parties shall appear before the Additional Commissioner, Nagpur on **6th November, 2023** at 11 am.

[ANIL S. KILOR, J.]