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

WRIT PETITION NO.5768 OF 2022

(AB. JABIR AB. NABI..VS.. THE ADDITIONAL COMMISSIONER, AMRAVATI & OTH.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Masood Shareef, Advocate for Petitioner.
Shri H.D.Dube, A.G.P. for Respondent No.1 to 3.
Shri A.H.Jamal, Advocate for Respondent No.4.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 10, 2023.

1. Heard.

2. In this writ petition a challenge is raised to the validity of the order passed by the Divisional Commissioner dated 29/07/2022, partly allowing the revision application and thereby setting aside the order of the Additional Collector, dated 16/03/2016 and maintaining the order dated 27/10/2014 passed by the Sub-Divisional Officer, Jalgaon (Jamod).

3. It is the case of the petitioner that the respondent No.4, who is a stranger without any *locus standi* or any grievance filed an appeal raising grievance to the mutation entry in the name of the petitioner, on 25/10/2013 before the Sub-Divisional Officer along with application for condonation of delay. The Sub-Divisional Officer vide order dated 27/10/2014 allowed the application for condonation of delay. Feeling aggrieved

by the same, the petitioner carried the revision application under Section 258 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "MLR Code") before the Additional Collector, which came to be allowed by the order dated 16/03/2016 and thereby the order passed by the Sub-Divisional Officer dated 27/10/2014 was set aside.

4. The respondent carried further revision against the same before the Additional Commissioner, which came to be partly allowed vide the impugned order dated 27/09/2022 by setting aside the order of the Additional Collector dated 16/03/2016 and maintaining the order of the Sub-Divisional Officer condoning delay in filing the appeal. Hence, this petition.

5. The learned counsel for the petitioner submits that second revision application is not maintainable before the Additional Commissioner, despite the same he entertained the revision application and passed the order. He, therefore, submits that the said order is without jurisdiction.

6. It is submitted that condoning the delay in filing the appeal amounts to admitting the appeal and therefore, no second appeal would lie against the same and accordingly the proceeding, which was filed by the petitioner before the Additional Collector was the

Revision Application. He, therefore, submits that once the proceeding before the Additional Collector was filed as revision, second revision application against any order passed by the Additional Collector before the Additional Commissioner is not maintainable.

7. The learned counsel for the petitioner, to fortify his submissions, has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Gurudassing..vs..State of Mah.*, reported in **2015(6) Mh.L.J. 915** and the judgment of the coordinate bench of this Court in *Ramanlal Kachardas Bakliwal..vs.. Niyaj Mohammad Khan Akhil Khan*, reported in **2004(2) ALL MR 49**.

8. On the other hand, the learned A.G.P. supports the order passed by the Additional Commissioner.

9. The learned counsel for the respondent No.4 strongly opposed the application and submits that as two appeals are provided under Section 247 of the MLR Code, filing of the revision application before the Additional Collector was erroneous and therefore, that should be treated as an appeal and if the same is treated as an appeal the proceedings filed before the Divisional Commissioner is maintainable as revision. Accordingly he prays for dismissal of the present writ petition.

10. In the light of the rival contentions, I have perused the record, impugned order and the relevant provisions.

11. Under the MLR Code, appeal is provided under Section 247. The proviso to Section 247 restricts the number of appeals and it says that in no case the number of appeals shall exceed two.

12. Section 252 of the MLR Code states that no appeal shall lie from an order (a) admitting an appeal or an application for review under under Section 251; (b) rejecting an application for revision or review; or (c) granting or rejecting an application for stay.

13. Section 257 of the MLR Code provides remedy by way of revision and Section 257(4) of the Code says that the revision of an order issued under sub-section (1) or (2) by any officer referred to therein shall not be permissible; but it shall be lawful for the State Government alone to modify, annul or reverse any such order issued under sub-section (1) or (2).

14. The Hon'ble Supreme Court of India, while interpreting the said provisions in the case of *Gurudassing* (supra), has held thus:

> "*30. From perusal of the entire scheme of the Code including Section 257, it is manifest that the revisional powers are not only exercisable by the State*

> *Government but also by certain other Revenue officers. There is nothing in the Code to suggest that if these revisional powers are exercised by a Revenue officer who has jurisdiction, it cannot be further exercised by a superior Revenue officer or by the State Government. A fair reading of Sections 257 and 259 suggests that if revisional powers are exercised by a Revenue officer having jurisdiction to do so, further revisional power can be exercised by the superior officer or by the State Government.*"

15. In the light of the above discussion and considering the scope of the provisions referred herein above, I have no hesitation to say that against the order of the Sub-Divisional Officer condoning the delay, in view of Section 252 of the MLR Code further appeal was not maintainable.

16. Condonation of delay in filing the appeal amounts to admitting the appeal and against the order of admitting the appeal further appeal is prohibited under Section 252 of the MLR Code. As such, the proceeding filed before the Additional Collector, challenging the order of the Sub-Divisional Officer condoning the delay in filing appeal, was a revision filed under Section 257 of the MLR Code.

17. Therefore, in the above referred backdrop, the Additional Commissioner ought to have examined that

whether the second revision application is maintainable, which he has not considered and entertained the revision application and passed the impugned order.

18. In that view of the matter, I am of the opinion that without entering into the merits of the matter, it would be appropriate to remand the matter back to the Additional Commissioner to decide the same afresh after considering the point of jurisdiction. Accordingly, I pass the following order :

i) The Writ Petition is partly allowed.

ii) The impugned order dated 29/07/2022, passed by the Additional Commissioner, Amravati is hereby quashed and set aside.

iii) The matter is remanded back to the Additional Commissioner, Amravati to decide the same afresh, after considering the point of jurisdiction raised by the petitioner.

The Writ Petition stands **disposed of** accordingly. No order as to costs.

JUDGE

R.Raut..