2024:BHC-AUG:12529

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO.3945 OF 2023

Saurabh Dilip Bafna
VERSUS
The Sub Divisional Officer, Vaijapur And Others
...
Advocate for the Petitioner : Mr. S.V. Adwant
AGP for Respondents no.1,2 : Mr. S.N. Kendre
Advocate for Respondent no.3 : Mr. V.D. Sapkal Senior Counsel i/b Mr. S.R. Sapkal
Advocate for Respondents no.4 to 7 : Mr. R.V. Gore
Advocate for Respondent no.8 : Mr. K.D. Jadhav
Advocate for Respondent no.11 : Mr. P.K. Lakhotiya
Respondent nos.9 and 10 served.
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CORAM : S. G. CHAPALGAONKAR, J.
Dated : July 1, 2024

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ORDER :-

1. The petitioner impugns the order dated 16.9.2022 passed by the Sub-Divisional Officer, Vaijapur/Respondent no.1, thereby condoning the delay of six years three months and twenty eight days caused in filing the ROR appeal as well as the order dated 17.2.2023 passed by the Respondent No.2-Additional Divisional Commissioner in Revision No.30 of 2023 thereby confirming the order passed by Respondent No.1.

2. Mr. Adwant, learned advocate appearing for the petitioner submits that on the basis of a

compromise decree passed in Regular Civil Suit No.544 of 2011 portion of the land from gat no.36 was allotted to Surekha Parmeshwar Argade. In pursuance of the compromise decree, mutation entry no.1284 has been certified on 27.10.2015. Respondent no.3 is claiming his right based on unregistered agreement to sale alleged to have been executed by father-in-law of Surekha and objects the mutation entry certified in favour of the petitioner after a period of six years. He would submit that unregistered or inadequately stamped agreement for sale is non-cognizable for any purpose. Further, the suit for specific performance of the contract filed by respondent no.3 is pending till this date. Consequently, there was no propriety in entertaining any proceeding at the behest of Respondent no.3 to assail the mutation entry certified based on compromise decree in favour of the petitioner. The very proceeding is sought to be entertained by respondent no.1 after six years by condoning the delay and such order is confirmed by the respondent no.2. He would therefore urged to quash and set aside the impugned order.

3. Per contra, Mr. V.D. Sapkal, learned Senior Advocate i/b Mr S.R. Sapkal appearing for Respondent no.3 submits that petitioner has an alternate remedy to file the revision application before the State Government in terms of section 257 of the Maharashtra Land Revenue Code. He would therefore urge to reject the writ petition.

4. In support of his submissions, he relies upon the judgment of the Supreme Court of India in Case of ***Gurudassing Nawoosing Panjwani Vs. State of Maharashtra and others reported in 2015 AIR SCW 6277***.

5. Per contra, Mr. Adwant, learned counsel appearing for the petitioner submits that alternate remedy is not bar for exercise of writ jurisdiction by this Court in appropriate cases. According to him, when exercise of jurisdiction by the authorities is inappropriate and prejudicial to the interests of weaker section, interference of writ court is warranted to save the judicial process of becoming instrument of oppression or abuse to subvert justice. Learned advocate Mr. Adwant relies upon the following judgments :-

i. Joint Action Committee of Air Line Pilots Association of India (ALPAI) and others Vs. Director General of Civil Aviation and others reported in (2011) 5 SCC 435.

ii. Manohar Lal Vs. Urgasen reported in (2010) 11 SCC 557.

iii. Chandrika Jha Vs. State of Bihar and others reported in (1984) 2 SCC 41.

iv. Godrej Sara Lee Ltd Vs. Excise and Taxation Officer and others reported in 2023 SCC online SC 95.

v. Vishnu Keshav Sanap Vs. Bhagwan Vithoba Ingale and others reported in 2011 SCC online Bom 811.

6. Having considered submissions advanced, it is apparent that challenge before this Court is against

the order condoning the delay caused in filing ROR appeal against the mutation entry certificate in favour of petitioner. Order of Sub-Divisional Officer regarding delay condonation was unsuccessfully assailed by the petitioner before the Divisional Commissioner. Section 257 of the Maharashtra Land Revenue Code provides for power of the State Government to call for and examine Record and Proceeding of subordinate officers. While interpreting the aforesaid provision, in case of Gurudassing Panjwani (supra), the Supreme Court observed as under :-

> *"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."*

7. It is, therefore, clear that petitioner can avail the remedy of filing the revision before the State Government under section 257 of the Code challenging the impugned orders passed by the Revenue Officers in exercise of the powers conferred under the Code itself.

8. It is trite that availability of alternate remedy is not bar to exercise the writ jurisdiction by this Court under article 226 and 227 of the Constitution of India.

However, such exercise cannot be routinely made but in case of certain exceptions like the order passed by the authorities, who sans jurisdiction or for violation of principles of natural justice or for any other reason to uphold the oppression or abuse to subvert justice.

9. In the present case, none of such ground is discernible. In fact, the proceedings before the Sub Divisional Officer is at nason stage. Petitioner, after availing the alternate remedy of revision, is entitled to approach this Court, in case, he suffers adverse order. However, this Court see no reasons to bypass the alternate remedy and entertain the writ petition at this stage. Consequently, there is no merit in the writ petition. The same is dismissed with liberty to the petitioner to avail the alternate remedy under section 257 of the Maharashtra Land Revenue Code.

10. At this stage, a prayer is made to extend the interim relief granted earlier for a period of two weeks from today. However, for the reasons stated in the order, prayer is rejected.

(S. G. CHAPALGAONKAR)
JUDGE

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