IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14532 OF 2021

Malhar s/o Balkrushna Kulkarni & others .. Petitioners

versus

The Divisional Commissioner & others .. Respondents

Mr. D. P. Palodkar, Advocate for the Petitioners.
Ms. K. R. Jamdhade, AGP for the State.
Mr. D. B. Rode and Mr. S. S. Kulkarni, Advocates for Respondents.

CORAM : R. M. JOSHI, J.
RESERVED ON : 8th JULY, 2024.
PRONOUNCED ON : 22nd JULY, 2024.

ORDER :

1. At the outset, learned counsel for Respondents raised objection with regard to the maintainability of the Petition on the ground that the impugned order can be assailed before the State Government in a revision filed under Section 257 of Maharashtra Land Revenue Code (for short “MLRC”).

2. In order to appreciate the rival submissions, certain facts are required to be considered which are re-produced in nutshell as under :-

Petitioners are grand children of Vishnu (deceased) who was owner of Gat No. 56 admeasuring 12 H 5R situated at village Kondhegavhan, Tq. Shrigonda, Dist. Ahmednagar. It is the case of the Petitioners that out of the said land, 5 H 10 R land was acquired for Kukdi canal. It was revealed to the heirs of Vishnu in or around 1988 that without acquisition of additional land of 1H 20 R, the same is shown to have been taken for the said purpose vide mutation entry No. 1063. Being aggrieved by the said entry, Regular Civil Suit No. 199/2003 came to be filed which was decreed on 08.06.1998. Learned Civil Judge declared mutation entries No. 1063 to 1322 as illegal and set aside the same. Pursuant to the said order, mutation entry No. 1748 was entered into in the revenue record whereby names of legal heirs of Vishnu were again shown against 1H 20 R land. On 21.04.2017, Additional Collector directed the Sub-Divisional Officer to initiate proceeding for revision of mutation entry No. 1748 and 1322. On 30.12.2017, the Sub-Divisional Officer allowed the revision. Against the said order, Appeal being RTS No. 86/2018 came to be filed before the Collector. This appeal is dismissed by order dated 21.07.2018. Second Revision Application bearing No. 963/2018 was filed which was also rejected by order dated 20.02.2020. On the basis of these orders, mutation entry No.

1348 stood reversed. Being aggrieved by these orders, present Petition is filed.

3. Learned counsel for Petitioners submits that the proceedings before the Sub-Divisional Officer are not initiated suo moto but on the directions issued by the Collector/Re-settlement Administrator by order dated 21.04.2017. It is thus his submission that against the said order, two revision proceedings bearing No. 86/2018 and 963/2018 are filed under Section 257 before the Collector and Divisional Commissioner. It is his submission that in view of amendment to Section 257 in the year 2016 with incorporation of sub-section 4(1), there shall not be one more revision permissible against order passed. It is his contention that the said amendment has been carried out by the State Government after judgment of the Hon'ble Supreme Court in case of Gurudassing Nawoosing Panjwani vs. The State of Maharashtra and others, **MANU/SC/1295/2015**. It is his submission by referring to the provisions of Sections 248 and 249 that unless the order impugned itself is reversed, it does not become appelable and if appeal is filed the same shall be treated as revision. Thus, according to him, once

two revisions are already exhausted, question of filing third revision before the State Government does not arise.

4. Learned counsel for Respondents opposed the said submission by referring to provisions of Section 257 of MLRC which entrust powers with the State Government to examine record and proceedings of the subordinate officer. Thus, it is their contention that irrespective of amendment to Section 257, revision against order passed by the Divisional Commissioner is tenable before the State Government.

5. Objection with regard to maintainability of this Petition on the ground of availability of alternate efficacious remedy for Petitioners to challenge the orders impugned. In this regard, it would be material to take note of provisions of Section 257 of MLRC which reads thus :-

> ***S. 257. Power of State Government and of certain revenue and survey officers to call for and examine records and proceedings of subordinate officers** :-*
>
> *(1) The State Government and any revenue or survey officer, not inferior in rank to an Assistant or Deputy*

Collector or a Superintendent of Land Records, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue or survey officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

[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 sub-ordinate officer [except with the previous permission of the State Government.]]

(2) A Tahsildar, A Naib-Tahsildar, and a District Inspector of Land Records may in the same manner call for and examine the proceedings of any officer subordinate to them in any manner in which neither a formal nor a summary.

(3) If in any case, it shall appear to the State Government, or to any office referred to in sub-section (1) or sub-section (2) that any decision or order or proceedings so-called for should be modified, annulled, or reversed, it or he may pass such order thereon as it or he deems fit:

[Provided that, any proceeding brought before any revenue or survey officer shall be disposed of within a period of one year from the date on which such proceeding is filed :

Provided further that, any proceeding pending under this section, before any revenue or survey officer on the date of commencement of the Maharashtra Land Revenue Code (Amendment) Act, 2016, shall be disposed of within a period of one year from the date of such commencement :

[Provided also that, where the revisional authority fails to dispose of any such proceeding within the period specified in this sub-section, the State Government alone shall be competent to grant such further such extension of time for disposing of any such proceeding as it may deem fit, after recording reasons therefor in writing.]

Provided also that, in exceptional circumstances, for reasons to be recorded in writing, the period for disposing of any such proceeding may be extended further by six months by the State Government or an officer not below the rank of Collector designated in this behalf who is superior to the revisional authority;

Provided also that, if the revisional authority fails to dispose of any such proceedings within the period *specified in sub-section (3), without sufficient cause, then he shall be liable for disciplinary action in accordance with the concerned disciplinary rules applicable to him:]*

[Provided also that], the State Government or such officer shall not vary or reverse any order affecting any question of right between private persons without having given to the parties interested notice to appear and to be heard in support of such order :

[Provided also that], an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

[(4) (1) 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, annual or reverse any such order issued under sub-section (1) or (2).]

6. This provision clearly indicates that a State Government has power to call for examination of record and proceeding of subordinate officer. Subordinate officer includes all officers those are appointed by the State Government. Order passed by Divisional

Commissioner also therefore can be subjected to revision before the State Government. This Court concurs to the submissions of learned counsel for the Petitioners that owing to provisions of Section 249 of the Act and considering the orders passed by the authorities, further two proceedings were requested to be treated as Revisions. Though it is submission of learned counsel for Petitioners that by virtue of amendment and incorporation of sub-section 4(1) of Section 257, the third revision is not permissible however, bare perusal of the said provision indicates that in any event Revisional power of the State Government is maintained by incorporation of words "but it shall be lawful for the State Government alone to modify, annual or reverse any such order issued under sub-section (1) or (2)". This provision thus makes it abundantly clear that the power of the State Government to entertain revision against order passed by the Divisional Commissioner has not been done away by amendment.

7. This Court, therefore, would not agree with the submissions made by learned counsel for the Petitioners that in order to overcome the judgment of Supreme Court in case of Gurudassing (supra), this amendment is carried out. If amendment is carried out by Act No. 11 of 2016 is carefully seen then it indicates that it was

aimed at expeditious and time bound disposal of the proceeding under the Code. Provisos included clearly demonstrate that time limit is fixed for decision of proceeding before the revenue officer and that no extension of time can be granted by the State Government that too after recording reasons therefor in writing. In furtherance of the said intention, a provision is being made that there cannot be any revision against the order under sub-sections (1) and (2) by any officer. However, that cannot be construed as taking way powers of the State Government of revision. In case of Gurudassing (supra) the Hon'ble Supreme Court has taken into consideration provisions of the Code more particularly Section 257 to hold that it gives an unfettered power to the State Government to call record of any proceeding of subordinate officer and to alter, annual or reverse any such order. Thus, it can be concluded that the introduction of sub-section (4)(1) to Section 257 of Code does not abrogate power of Revision of State Government.

8. Having regard to the above discussion, this Court is of considered view that there is efficacious alternate remedy available to the Petitioners to file revision against the impugned order before the State Government. This Court, therefore, is expected to exercise

restrains from invoking jurisdiction under Articles 226 and 227 of Constitution of India in entertaining challenge to impugned order. Having regard to these facts, the objection raised by Respondents regarding maintainability of the Petition sustains.

9. The Petitioners are permitted to file Revision under Section 257 of MLRC before State Government against impugned order, if so desire. If revision proceeding is filed within three weeks from today, same shall be decided expeditiously and in any case within six months from today.

10. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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