IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9300 OF 2017
WITH
CIVIL APPLICATION NO. 11244 OF 2017

PRATAPSING S/O. NARAYANSING RAJPUT
VERSUS
LATE BHAVSING S/O. NARAYANSING RAJPUT (DIED)
THROUGH LRs and others.
...
Mr. V.D. Salunke h/f. Mr. V.Y. Patil, Advocate for petitioner
Mr. G.V. Wani, Advocate for respondent Nos. 3A/2 and 3A/3
Mr. R.B. Temak, Advocate for respondent Nos. 6,7 and 8.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 15th JULY, 2024.

FINAL ORDER :-

1. The petitioner impugns the order dated 6.6.2017 passed by Additional Commissioner, Nasik division in R.T.S. Review No. 51 of 2013.

2. Mr. V.D. Salunke, learned advocate for the petitioner submits that Lands Gat No. 1-1A to 1-1B admeasuring 0.42 R and 0.40 R, respectively, are in possession of the petitioner since 1981, when the partition of the joint family property was effected amongst the brothers. Consequently, the mutation entry was recorded. On 24.5.1982, the petitioner transferred lands in the name of his mother. However, on death of mother, in the year 1997, brothers of the petitioner made an application to mutate their names as legal heirs of mother. Accordingly,

mutation entry No. 2583 was recorded. The petitioner assailed said mutation entry in appeal before the Assistant Collector. However, his appeal was rejected. Even his second appeal filed before the Additional Collector, Jalgaon was rejected.

3. Thereafter, the petitioner filed R.C.S. No 215 of 2001 seeking declaration of ownership before Civil Judge Junior Division, Jamner. The petitioner also filed one more appeal under Section 247 of MLR Code, against decision dated 29.9.2000 rendered by the Additional Collector. However, vide order dated 19.9.2011, the Additional Collector rejected the second appeal filed under Section 257 of the MLR Code stating that his previous appeal No. 90 of 2000 is rejected on 30.5.2001. The petitioner, therefore, filed revision application before the Additional Commissioner, Nasik under Section 257 of the MLR Code, wherein, he explained the delay caused in filing the revision application. On 17.12.2012, the learned Additional Commissioner allowed the revision application filed by the petitioner and quashed and set aside the Mutation Entry No. 2583. However, respondents filed review application purportedly under Section 258(2) of the MLR Code. The Additional Commissioner, Nasik, allowed the review application vide order dated 6.6.2017. The petitioner takes exception to the said order in this writ petition.

4. Mr. Salunke, learned advocate for the petitioner would submit that learned Divisional Commissioner has no powers to entertain the Review Application except on grounds as stipulated under sub-clause (2) of Section 258 of the MLR Code. He would submit that neither the application submitted by the respondent, nor impugned order stipulates

admissible grounds of review. He would further point out that the review application was barred by limitation and without whispering anything on the aspect of delay, the impugned order is passed, which is a serious error of jurisdiction on the part of the Divisional Commissioner. To buttress his submissions, he relied upon the judgment of the Supreme Court in the matter of ***Ragho Sing Vs. Mohan Singh 2001 AIR SCW 2351.***

5. Per contra, Mr. G.V. Wani, learned advocate for respondent Nos. 3A-2 and 3A-3 and 4 would submit that the Divisional Commissioner possesses ample powers to review his own orders in terms of Section 258 of the MLR Code. Referring to sub-section (2) of Section 258, he would submit that power of review can be exercised for any sufficient reason and need not be limited to discovery of new material or error or mistake on the face of record.

6. Having considered the submissions advanced, it can be gathered that Divisional Commissioner, Nasik had passed order dated 17.12.2012 in revision application filed by the petitioner, thereby setting aside the order passed by the Additional Collector, Jalgaon dated 30.5.2001. Consequently, cancelled the Mutation Entry No. 2583. Pertinently, the revision application No. 430 of 2011 was filed by the petitioner on 19.12.2011 challenging the order dated 30.5.2001 passed by Additional Collector, Jalgaon. It is not disputed before this Court that no separate application seeking condonation of delay of more than 10 years was filed alongwith revision application. Ignoring such inordinate delay, the Revision Application was entertained and allowed vide order dated 17.12.2012. Respondents, after getting knowledge of the order dated 17.12.2012, filed R.T.S. Review Application No. 51 of 2013 on the

ground that time barred revision application has been wrongly entertained, ignoring the exponential delay of more than 10 years. The Divisional Commissioner entertained the review application and recalled the order dated 17.12.2012. The sequence of events would show that the review application has been allowed noting that it has been wrongly entertained after 10 years, without condoning inordinate delay. Further, there was no separate application explaining the delay and prayer to condone the same.

7. Section 258 of the MLR Code provides the powers of review to State Government to Revenue or Survey Officers. Sub-clause (2) of Section 258 prescribes limited grounds of review, which reads as under :-

> *"258. (1) The State Government and every revenue or survey officer may, either on its or his own motion or on the application of any party interested, review any order passed by itself or himself or any of its or his predecessors in office and pass such orders in reference thereto as it or he thinks fit :*
>
> *Provided that,*
>
> *(i) if the Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, on the ground other than that of clerical mistake, he shall first obtain the sanction of the Commissioner or the Settlement Commissioner, as the case may be, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order on the ground other than that of clerical mistake, whether such order is passed by himself for his predecessor, he shall first obtain the sanction of the authority to whom he is immediately subordinate;*

> *(ii) no order shall be -varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;*
>
> *(iii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending, be reviewed;*
>
> *(iv)* ***no order affecting any question of right between private persons shall be reviewed except on an application of a party to the proceedings, and no such application for review of such order shall be entertained unless it is made within ninety days from the passing of the order.***
>
> *(2) No order shall be reviewed except on the following grounds, namely*
> *(i) discovery of new and important matter or evidence;*
> *(ii) some mistake or error apparent on the face of the record;*
> *(iii) any other sufficient reason***."**

8. Perusal of the aforesaid provision enabling review, particularly, sub-clause(iv) of clause (1) depicts that no order affecting any question of right between the private persons shall be reviewed except on an application of a party to the proceedings, and no such application for review of such order shall be entertained unless it is made within **ninety days** from the passing of the order.

9. If the aforesaid provision is considered, the application for review by the petitioner ought to have been filed within a period of ninety days from the date of the order. Admittedly, the order under review was passed on 17.12.2012 and the application for review was

tendered by the petitioners on 17.7.2014 seeking review of the said order passed in Revision Application No. 430 of 2011. In that view of the matter, the review application itself was time barred and no application for condonation of delay was filed. At this stage, reference can be made to the judgment of the Supreme Court of India in the case of ***Ragho Singh (supra)*** , wherein, the Apex Court observed as under :-

> *" We have heard learned counsel for the parties. Since it is not disputed that the appeal filed before the Additional Collector was beyond time by 10 days and an application under Section 5 of the Limitation Act was not filed for condonation of delay, there was no jurisdiction in the Additional Collector to allow tht appeal. The appeal was liable to be dismissed on the ground of limitation. The Board of Revenue before which the question of limitation was agitated was of the view that though an application for condonation of delay was not filed, the delay shall be deemed to have been condoned. This is patently erroneous. In this situation, the high Court was right in setting side the judgment of the Additional Collector as also the Board of Revenue. We find no infirmity in the impugned judgment. The appeal is dismissed. No costs."*

10. It is trite that if the period of limitation is prescribed under statute for entertaining the proceeding, the statutory provision needs to be given full effect. Although, this court finds that the revision application of the respondents was wrongly entertained, without

condoning delay of 10 years, respondent No.1 has repeated same mistake while entertaining the review application, ignoring the limitation period prescribed for entertaining the review application. Hence, the following order :-

11. **O R D E R**

[A] Writ Petition is allowed.

[B] The impugned order dated 6.6.2017 passed by the Additional Commissioner, Nasik in R.T.S. Review- 51/2013 is hereby quashed and set aide. However, LRs of respondent No.3 or respondent No.4 shall be at liberty to take up appropriate remedy as is permissible in law, against the order passed in RTS Revision No. 430/2011 dated 17.12.2012.

[C] Civil application No. 11244 of 2017 stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-