

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12251 OF 2019.

Sujata Umakant Savant and Others.

...Petitioners.

Versus

The Revenue Minister for the State of Maharashtra
and Others.

...Respondents.

Mr. Pandit Kesar for Petitioner.

Mr. S. S. Patwardhan i/b Mr. Ajay Raje Nimbalkar for Respondent Nos. 5 to 9.

Ms. S. D. Chipade, AGP for Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : December 17, 2024.

P. C. :

1. By this petition, the challenge is to the order dated 19th January, 2019 passed by the Hon'ble Minister purportedly under Section 257 of the Maharashtra Land Revenue Code, 1966 [for short, "**MLRC**"] against the order passed by the Commissioner under Section 35 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 [for short, "**the Fragmentation Act**"] setting aside the order of the Commissioner and restoring the order of Sub-Divisional Officer.

2. The factual matrix about which there is no dispute is that Respondent No.5 had filed an Application under Section 7 of the Fragmentation Act before the SDO which came to be allowed by order dated 5th August, 2013. As against which, the revision was filed before

the Commissioner under Section 35 of the Fragmentation Act which came to be allowed setting aside the order of SDO. Against the order of Commissioner, Respondent No.5 approached the Hon'ble Minister which led to the passing of the impugned order.

3. Learned counsel appearing for the Petitioner would submit that the Hon'ble Minister could not have exercised the powers under Section 257 of MLRC for adjudicating the issue arising out of Fragmentation Act. He would further submit that under Section 35 of the Fragmentation Act, there is no remedy of second revision and once the remedy of revision has been exhausted before the Commissioner and order was passed, the Hon'ble Minister could not have exercised any powers. He would further submit that the order passed under Section 257 and on this ground alone, the impugned order is required to be quashed and set aside.

4. *Per contra* learned counsel appearing for Respondent No.5 would submit that though the impugned order is ostensibly under Section 257 of MLRC, in fact, it was a revision filed under Section 35 of the Fragmentation Act. Drawing support from the decision in the case of ***Gurudassing Nawoosing Panjwani v. State of Maharashtra***¹, he submits that the provisions of Section 35 are *pari materia* with Section 257 of MLRC and thus, second revision was maintainable even under

1 (2016) 2 Supreme Court Cases 213

Section 35 of Fragmentation Act.

5. I have considered the submissions and perused the record.

6. The only issue which arises for consideration is whether the State Government had any revisional powers under Section 35 of the Fragmentation Act against the orders passed by the Commissioner. Against the order passed by the Sub-Divisional Officer under Section 7 of the Fragmentation Act, the revision lies under Section 35 of the Fragmentation Act which reads thus:

*35. The State Government or the Commissioner in respect of such matters as the State Government may by general or special order specify in this behalf may at any time for the purpose of satisfying itself or himself as the case may be, as to the legality or propriety of any order passed by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it or he, as the case may be, thinks fit:
[Provided that no order shall be varied or revised until the parties interested have been given a reasonable opportunity of showing cause against the proposed variation or revision of the order.]*

7. A plain reading of the provision would indicate that the State Government or the Commissioner may call for and examine the cases pending before or disposed of by such officer as may be specified. Although it is sought to be contended that the provisions of Section 257 are *pari materia* with Section 35, the distinguishing feature is that Section 257 while referring to the State Government and Revenue or Survey officers uses the word "and" whereas Section 35 of the Fragmentation Act uses the word "or". The rule of literal interpretation will have to be applied and there is no justification for reading the

word “or” as “and” and to hold that the second revision is maintainable. In any event, the Commissioner had already exercised power under Section 35 of the Fragmentation Act and therefore, the revisional powers could not have been exercised by the State Government. There is no other provision which has been pointed out under the Fragmentation Act under which the State Government could have exercised revisional powers against the order passed by the Commissioner.

8. In light of the above, the impugned order is clearly without jurisdiction and is hereby quashed and set aside. It is open for Respondent Nos.5 to 9 to adopt appropriate remedy as available in the law. It is made clear that this Court had not gone into the merits of the matter and only on the legal submission, the petition is allowed and therefore, all rights and contentions of all the parties are expressly kept open.

[Sharmila U. Deshmukh, J.]