

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5561 OF 2022

- | | | |
|----|--|------------------|
| 1 | Ashokrao Ganpati Ghatge |) |
| | Age : 70 Years |) |
| 2 | Arun Ganpati Ghatge |) |
| | Age : Adult, |) |
| | Both residing at 1458, 'E' Ward |) |
| | 7 th Lane, Rajarampuri, Kolhapur |) |
| 3 | Suresh Ganpati Ghatge |) |
| | (Since deceased through Lrs.) |) |
| 3A | Smt. Rekha Suresh Ghatge |) |
| | Age : Adult, Occupation : Household |) |
| 3B | Kum. Sweta Sunil Ghatge |) |
| | Age : Adult, Occupation : Household |) |
| | Both residing at Ganesh Bunglow |) |
| | 526/1, Plot No.6, Suryawanshi Mal Samratnagar, |) |
| | Kolhapur |) |
| 4 | Ajit Ganpati Ghatge |) |
| | (Since deceased through Lrs.) |) |
| 4A | Asha Ajit Ghatge |) |
| | Age : Adult, Occupation : Household |) |
| 4B | Anish Ajit Ghatge |) |
| | Age : Adult, Occupation : Service |) |
| | Both residing at Plot NO. 129, |) |
| | Mukta Sainik Housing Society, Kolhapur |) |
| 4C | Sou. Anushri Pawan Ghatge |) |
| | Age : Adult, Occupation : Household |) |
| | Residing at 1331/1, Nagar Road |) |
| | Near Decathlon, Wagholi, Pune |) |
| 5 | Kiran Ganpati Ghatge |) |
| | (Since deceased through Lrs.) |) |
| | |) |
| 5A | Smt. Sunita Kiran Ghatge |) |
| | Age : Adult, Occupation : Household |) |
| 5B | Shri. Prasad Kiran Ghatge |) |
| | Age : Adult, Occupation : Service |) |
| | Both R/at- R.C.S. No. 250/B1 to B2 |) |
| | Nagala Park, Next Keviz Park, Kolhapur |)... Petitioners |

Versus

- | | | |
|----|---|-------------------|
| 1 | Shri. Madhavrao Ramchandra Ghatge |) |
| | Age : 65 years, Occupation : None |) |
| 2 | Diliprao Ramchandra Ghatge |) |
| | (Since deceased through Lrs.) |) |
| 2A | Smt. Mangal Dilip Ghatge |) |
| | Age : Adult, Occupation : Household |) |
| 2B | Shri. Ashwin Dilip Ghatge |) |
| | Age : Adult, Occupation : Service |) |
| 2C | Sou. Amrita Pranav Advitot |) |
| | Age : Adult, Occupation : Household |) |
| | All residing at C.S.No. 1458, 'E' Ward, 7 th Lane, |) |
| | Rajarampuri, Kolhapur |) |
| 3 | Deputy Director of land Records |) |
| | Pune Division, Pune |) |
| 4 | Superintendent of Land Records, Kolhapur |) |
| | Copy to Respondent Nos. 3 and 4 |) |
| | To be served on the Office of Government Pleader, |) |
| | High Court, Appellate Side, Mumbai |) ... Respondents |

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- Mr. Chetan Patil a/w. Mr. Mandar Bagkar, Advocates for the Petitioners.
- Mr. Pandit Kasar, Advocate for Respondent No.1.
- Mr. J. P. Patil, AGP for Respondent Nos. 3 and 4- State.

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CORAM : R. M. JOSHI, J.

RESERVED ON: 23rd SEPTEMBER, 2024.PRONOUNCED ON: 27th SEPTEMBER, 2024.**JUDGMENT :**

1. The petitioner takes exception in this petition to order dated 06.04.2022 passed by Deputy Director of Land Records, Pune holding that the challenge to order before him is not tenable and Revision can only be preferred before the State under Section 257 of the Maharashtra Land Revenue Code, 1966 (for short “**the Code**”).

2. It is the case of the petitioner that the name of his father was entered into revenue record in respect of old City Survey No. 1458/4/1,2 and 3 (renumbered as Plot No. 162 as per the Town Planning Scheme sanctioned by City of Kolhapur, in the year 1979). His name was entered on the basis of statement made by respondent Nos. 1 and 2 and other co-sharers. An order was passed on 10.01.1980 by the City Survey Officer directing name of Ganpati Ishwar Ghatge (father of petitioner) to be entered in the property card of the subject land. According to the petitioners respondents have challenged order dated 10.01.1980 passed by the City Survey Officer by filing an appeal before the Superintendent of Land Records, Kolhapur under Section 247 of the Code. On 30.11.2008 i.e. after the period of 38 years of the said order, appeal came to be filed. An application for condonation of delay was also filed along with the appeal. It is claimed by the petitioners that no reason leave apart sufficient cause has been stated for condonation of delay of 38 years. Pursuant to the receipt of notice petitioner appeared before respondent No.4 and objected to the application for condonation of delay. Respondent No.4 by order dated 01.02.2022 condoned the delay of 38 years. This order was challenged by filing a Revision Application under Section 257 of the code before the respondent No.3 -Deputy Director of Land Records, Pune. This Authority, however, issued impugned communication dated 06.04.2022

holding that he has no authority to entertain the said Revision Application and only remedy available for the petitioners is to file Revision Application before the State Government. Petitioners on various grounds set aside in the petition in paragraph No.7(a)(2)(h) have challenged the impugned order.

3. Learned counsel for the petitioners submits that the impugned communication is not tenable in the eyes of law considering the relevant provisions of M.L.R Code. It is his submission that the order passed by Superintendent of Land Records of condonation of delay only has been challenged before the Deputy Director of Land Record by invoking provisions of Section 257 of the Code. According to him, since the order of condonation of delay being not covered by Section 252 of the Code and since the said order is also not declared as final or conclusive as contemplated by Section 259 of the Code, the Revision against such order is maintainable before respondent No.3 being superior officer to respondent No.4. To support his submissions, he has placed reliance on:

- i. **Ramanlal s/o. Kachardas Bakliwal Anr. Vs. Niyaj Mohammad Khan Akhil Khan Ors. (2004 ALL MR 249)**
- ii. **Ahmad Ambir Shaikh (Deceased) thr. Lrs. Mukhtyar Esmael Shaikh & Ors. Vs. Abdul Rahiman Ambir Shaikh (Deceased) thr. L.R. Safiya Khalil Shaikh & Ors. (Civil W.P. 1506 of 2022)**
- iii. **State of U. P. and Another Vs. Synthetics and Chemicals Ltd. and Anr. (1991) 4 SCC 139**
- iv. **Ramanlal s/o. Kachardas Bakliwal & Anr. Vs. Niyaj Mohammad Khan & Ors. (2004(2) ALL MR 49)**

- v. **Raichurmatham Prabhakar and Anr. Vs. Rawatmal Dugar**
(2004 (4) SCC 766)
- vi. **Balwant Narayan Thale Vs. Pushplata Vasudev Patil and others**
(Civil W.P. 8673 of 2016)

He has also drawn attention of the Court to the judgment of the Coordinate Bench of this Court in W.P. No. 12965 of 2023, in the case of ***Sadanand Tukaram Suroshe Vs. Ashok Gajanan Suroshe and Ors., in Civil Writ Petition No. 12965 of 2023 passed on 28.03.2024*** to contend that though in this case the Coordinate Bench of this Court has taken a view that the order of condonation of delay and admitting the appeal can be challenged only before the State Government in view of Section 257 of the code, the said judgment does not take into consideration Section 259, which specifically provides that whenever in this code it is provided that the decision or order shall be final or conclusive such provision shall mean that no appeal lies from such decision but it shall be lawful to the State Government alone to such to modify or reverse under such decision under the provisions of Section 257. He drew attention of this Court to provisions of Section 123, 124, 137, 142 and 165(2) which according to him specifically provide that the orders passed under these provisions are final or conclusive. As such, the order of condonation of delay being not covered by the said provision, Section 259 has no application and resultantly the revision be held maintainable before the Officers referred

in Section 257 and not before the State Government.

4. Learned counsel for the contesting respondents opposed the said submissions by mainly relying upon the judgment in the case of ***Sadanand Tukaram Suroshe*** (supra). It is his contention that the Co-ordinate Bench of this Court after taking into consideration the relevant provisions of the Code as well as all all judgments on the point has held that in case of condonation of delay and admission of appeal, the order becomes non appealable and as such same can be challenged only before the State Government u/s. 257 of the Code. He drew attention of the Court to the amendment to Section 257 by introduction of sub-Section 4 on 05.02.2016 to contend that this provision abundantly makes it clear that the power is only with the State Government to modify or reverse the order issued under sub-Section 1 or 2 by any Officer referred to therein, when appeal is barred under Section 252 of Code. Thus, it is his argument that the order passed by respondent No.4 is in consonance with the judgment of this Court and hence there is no reason or justification to take any different view than the one taken by the Coordinate Bench of this Court and to cause interference in impugned order.

5. At the outset, it is necessary to take into consideration in which facts in which the judgment has been passed by the Coordinate Bench in the case of ***Sadanand Tukaram Suroshe*** (supra). Perusal of the same

indicates that the order of condonation of delay and admission of appeal were subjected to the challenge before the Additional Collector. It is held therein in paragraph-23 that *“as the order of SDO admits the appeal, there is statutory interdict as Section 252 of the MLRC bars filing of an appeal against an order of admitting the appeal. Hence, against the order of SDO admitting the Appeal after condonation of delay, there is no remedy of 2nd appeal to the Additional Collector available to the Petitioner under Section 247 of MLRC Code”*. It is further held in paragraph No. 24 that *“having held that no remedy of 2nd appeal was available as the order of SDO admitted the Appeal, the issue now to be considered is the remedy available to the Petitioner against the order of SDO condoning the delay and admitting the Appeal. The power of revision is contained in Section 257 of the MLRC which vests concurrent power of revision in the State Government and any Revenue or Survey Officer not inferior in rank to Assistant or Deputy Collector or the Superintendent of Land Records against the order of subordinate revenue or survey officer”*. After referring to the relevant provisions of Code it is observed that *“to put it simply, if order is passed by any revenue or survey officer in exercise of the powers under Sub-Section (1) or Sub-Section (2) of Section 257 of the MLRC, in exercise of the revisional jurisdiction, the second revision against the said order passed by the revenue or survey officer will lie to the State*

Government alone.” In paragraph No. 25 it is held that “in the present case, it cannot be said that the order issued by the Additional Collector was an order passed in exercise of the revisional jurisdiction under Sub-Section (1) of Section 257 of the MLRC against which second revision is permissible only to the State Government.” Finally in paragraph No. 27 it is held that “upon conjoint reading of the provisions of Section 251, Section 252 and Section 259 of MLRC, in my view, the only remedy available to the Petitioner is the remedy of revision before the State Government against the order of the SDO admitting the Appeal after condoning the delay.” In paragraph No. 35 the issues framed for consideration are answered as, “(a) The order of SDO admits the Appeal after condoning the delay. Section 252 of MLRC bars filing of Appeal from an order admitting the Appeal. The only remedy available to the Petitioner is remedy of revision. (b) By virtue of Section 259 of MLRC, the order admitting Appeal being final as no appeal lies from such decision, the revision would lie before the State Government.”

6. This judgment is passed in the facts of the case, wherein, there was challenge to the order of condonation of delay as well as admission of appeal. Pertinently, in the instant case, there is no challenge raised by the petitioner to the order of admission of the appeal and specifically order of condonation of delay has been taken exception to before the Deputy

Director of Land Records.

7. The contention of learned counsel for the respondents with regard to the order of condonation of delay and admission of appeal to be challenged in one proceeding and therefore revision is not maintainable except before State Government is based on the doctrine of merger. At this stage it would be relevant to take note of Judgment of Hon'ble Supreme Court in the case of *Kunhayammed and Others v. State of Kerala and Another (2000) 6 SCC 376*, which deals with issue of doctrine of merger.

“44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.”

It is therefore clear that the doctrine of merger means to sink or disappear in something else to become absorbed or extinguished. The logic

behind the doctrine of merger is that there cannot be more than one decree or operative order governing the same subject matter at a given point of time. The decree or order is passed in inferior Court is subjected to a remedy available under law before superior forum, then decree or order under challenged continues to be effective and binding. Once the superior Court disposes the dispute before it in any manner either by confirming a decree or order by setting aside the order modifying the same it is the decree of the superior Court which is final and operative decree. The decree of the inferior Court gets merged into the order passed by the superior forum. Similarly, it can also be said that the grant of interim relief gets merged in the final decree/order. It is also necessary that the merger would apply in respect of the judgment / order covering same subject and not otherwise.

8. Now question arises as to whether it can be said that the order of condonation of delay stood merged into the order of admission of appeal to compel the aggrieved party to challenge the same simultaneously. Section 251 deals with the filing of appeal beyond period of limitation. The said provision reads thus:

“251. Admission of appeal after period of limitation. :

Any appeal or an application for review under this Chapter may be admitted after the period of limitation prescribed therefor when the appellant or the applicant, as the case may be, satisfies the officer or the State Government to whom or to which he appeals or applies, that he had sufficient cause for not presenting the appeal or application, as the case may be, within such period.”

9. It is settled position of law that there is a delay in causing / filing of the appeal, unless the delay is condoned the Appellate Authority does not get jurisdiction to entertain the appeal. Section 251 quoted above clearly indicates that in case of any appeal is filed beyond the period of limitation, the same shall not be admitted unless sufficient cause for not presenting the appeal or application as the case may be within such period.

10. Section 255 provides for the powers of the appellate authority which include the power of admission the appeal or after calling the record and giving opportunity of hearing to the appellant summary rejection thereof. Proviso thereto indicates that the Appellate Authority shall not be bound to call for the record where the appeal is time barred does not lie. Sub-Section 2 states about the further stage of the admission of appeal which is the date of hearing and notice thereof to be served on the respondents. As per Sub-Section 3 after hearing the parties Appellate Authority may for the reasons to be recorded in writing either affirm, confirm or modify the order of appeal against.

11. This provisions, therefore, clearly indicate different stages of the appeal when the appeal is filed after period of limitation. Undoubtedly, unless the delay is condoned the Appellate Authority cannot proceed to pass order of admission of appeal. Coming back to the question of application of doctrine of merger in case of condonation of delay in filing

appeal and admission of appeal thereafter. The doctrine of merger as explained hereinabove would apply to a case where the order of the inferior Court is confirmed, modified or set aside by the Appellate Court. Similarly, in the case of interim order, the same merges into the final order passed in the same proceeding.

12. Application for condonation of delay and appeal are two distinct proceedings. The question of order admitting appeal to supersede order of condonation of delay does not arise. One more aspect requires consideration is criterias for condonation of delay and admission of the appeal, which are totally different. As per the settled position of law while condoning the delay the merits of the case cannot be gone into and what is relevant is the sufficient cause being made out for not presenting the proceeding within a period of limitation. As against this, the order of admission of appeal is based upon the application of mind with regard to the merit of the appeal. Thus for this reason also order of condonation of delay cannot be said to have merged into the order of admission of appeal. Thus having regard to the different spheres in which both orders operate, it is not possible to accept that the order of condonation of delay merges in order of admission of appeal. Consequently, even if order of condonation of delay and admission of appeal are passed by a common order for all purposes same are required to be considered as distinct. Hence, it would

be open to aggrieved party to challenge order of condonation of delay independently. Section 252 of Code reads thus :

“252. Appeal shall not be against certain orders.

No appeal shall lie from an order

(a) admitting an appeal or an application for review under section 251 ;

(b) rejecting an application for revision or review; or

(c) granting or rejecting an application for stay.”

13. Reverting back to the fact of the case, in the instant case undeniably the order of admission of appeal has not challenged before respondent No.3. In considered view of this Court, therefore, since the order of condonation of delay is not a final order nor any appeal is denied under the Code, it would amount to rewriting of the statute which is not permissible in law. The Judgment of the Coordinate Bench of this Court in the case of ***Sadanand Tukaram Suroche*** (supra) is in the peculiar facts that both order of condonation of delay and admission of appeal were challenged. Whereas in the instant case only order of condonation of delay is challenged before the respondent No.3. In considered view of this Court, the judgment cited (supra) in the case ***Sadanand Tukaram Suroche*** (supra) will have no application to the present case.

Thus it is specifically provided in the Code that no appeal would lie against the orders specified therein. With aid of Section 259, it can be said that those orders which are said to be final and conclusive, no appeal

would lie against these orders too. However, except any order falls in these two categories, can not be said that such order is non appealable.

14. It is settled law that the party cannot be denied remedy unless it is specifically barred by the Statute. Considering the different consideration / nature of the application of condonation of delay and admission of the appeal, it cannot be said that order of condonation of delay stood merged in the order of admission of appeal. These are completely two different stages and cannot be called as interim stage of same proceeding. Unless delay is condoned the Appellate Authority does not get any jurisdiction to entertain the appeal meaning thereby it is only after condonation of delay the appeal become entertainable and proceeding appeal would come into existence thereafter. There is no embargo created by code for filing appeal against the order against the condonation of delay. Thus, to hold that order of condonation of delay is not appealable would amount to coin new provision which is absent in the code. Thus, the said order is not covered under Section 252 of Code and therefore the Petition cannot be called upon to challenge this order only before the State Government, thereby taking away his right of filing revision/ appeal before the immediate superior authority to the authority which has passed impugned order.

15. In so far as the contention of the learned counsel for the petitioner in respect of the learned Coordinate Bench of this Court in the case of

Sadanand Tukaram Suroche (supra) having not taken into consideration Section 259 is concerned, this Court does not agree with the said submission. Section 259 reads thus :

"259. Rules as to decisions or orders expressly made final.

Whenever in this Code, it is provided that a decision or order shall be final or conclusive, such provision shall mean that no appeal lies from any such decision or order; but it shall be lawful to the State Government alone to modify, annul or reverse any such decision or order under the provisions of Section 257."

With title "Rules as to decisions or orders expressly made final" provision explains that whenever in this Code it is provided that the decision or a order shall be final or conclusive, such provision shall mean that no appeal lies from any such decision or order but it shall be lawful to the State Government alone to modify or affirm or reverse any such decision or order under the provisions of Section 257. This provision, therefore, is explanatory in nature to indicate that wherever any order is declared as final, no appeal would lie against it and order against appeal does not lie, is final and conclusive. Thus this Court records full agreement with the view taken by Coordinate Bench that in case an order is made non appealable, it is final and conclusive order and resultantly revision against such order would lie before the State Government under Section 257 of Code. This however would not apply to the present case owing to the involvement of difference in facts herein.

16. Though it is sought to be argued on behalf of the respondents that if

the contention of the petitioner is accepted that there is appeal provided against the order of condonation of delay, revision filed by him before the respondent No.3 would not be maintainable. If at all any such issue is raised, the same will have to be decided by respondent No.3. It is premature to take up the said issue for consideration and to record any finding and hence this Court refrains itself from recording any finding to that effect.

17. As a result of the above discussion the impugned communication issued by respondent No.3 is not tenable and hence is set aside. The proceedings are relegated back to respondent No.3 for decision of the same in accordance with law.

(R. M. JOSHI, J.)