



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14875 OF 2023

Rajaram Balu Waingade

...Petitioner.

Versus

Vasant Balu Waingade

...Respondent.

Mr. Ranjeet Patil for the Petitioner.

Mr. Pramod Kathane a/w Mr. Manoj G. Sawardekar for the Respondent No. 1.

Ms. Tanu Bhatia, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : July 19, 2024.

P. C. :

1. Heard.

2. By this petition, challenge is to the order dated 16th July 2019 passed by the Deputy Director of Land Records by which the Deputy Director of Land Records has disposed of the appeal preferred by Petitioner for the reason that appeal is not maintainable under Section 252 of the Maharashtra Land Revenue Code, 1966 [for short "MLRC"].

3. Facts of the case are that the Respondent had filed an appeal before the District Superintendent of Land Records along with an application for condonation of delay of about 3 years. The said application came to be allowed by the District Superintendent of Land Records. As against this, the Petitioner filed an appeal before the Deputy Director of Land Records. The Deputy Director of Land

Records by the impugned order disposed of the appeal as not maintainable.

4. Mr. Ranjeet Patil, learned counsel appearing for the Petitioner submits that what was under challenge before the Deputy Director of Land Records was the order condoning the delay. As the order of District Superintendent of Land Records was not an order admitting the appeal, the statutory interdict of Section 252 of the MLRC would not apply. He submits that by the said order, the District Superintendent of Land Records did not admit the appeal and only the delay has been condoned, as against which the appeal would lie before the Deputy Director of Land Records.

5. Mr. Kathane, learned counsel appearing for the Respondent No.1 would support the contentions of Petitioner and would submit that the Division Bench of this Court in ***Chinchani Tarapur Education Society v. State of Maharashtra [Civil WP No. 1790/2018 dtd. 14th September 2018]*** has held that the order condoning delay is appealable and the bar created by Clause (a) of Section 252 of MLRC will not apply. As in the facts of that case, in the instant case, the District Superintendent of Land Records had condoned the delay and thereafter fixed the appeal for hearing on a particular date. He submits that the said order does not amount to admission of appeal and the decision on condonation of delay was appealable before the Deputy Director of

Land Records.

6. Perusal of the order passed by the District Superintendent of Land Records, dated 8th April 2019 would indicate that the findings which were rendered by the District Superintendent of Land Records was only on the aspect of condonation of delay. The order specifically records that the delay caused in filing appeal is condoned and the appeal was fixed for further hearing. It is therefore clear that by the order of District Superintendent of Land Records all that was done, was that the delay has been condoned and there was no order of admission of appeal.

7. The provisions of Section 252 of the MLRC are very clear and provides that the appeal shall not lie against an order admitting an appeal. In the present case, as there is no order of admission of appeal, the bar created by Clause (a) of Section 252 of the MLRC will not apply in the present case.

8. Learned counsel appearing for the Respondent No.1 has rightly placed reliance on the decision of the Division Bench in ***Chinchani Tarapur Education Society*** (supra). In the facts of that case, the Division Bench has held that the order of District Superintendent of Land Records consists of two parts, the first part condones the delay and the second part fixes the appeal on a particular day. Facts of the said case are identical to the facts of present case and the issue is

settled by the said decision wherein this Court has specifically held that in such a case, order condoning the delay will be appealable and bar created by Clause (a) of Section 252 of the MLRC will not apply.

9. In the light of above, the order dated 16th July 2019 passed by the Deputy Director of Land Records is quashed and set aside.

10. The application filed by the Respondent seeking condonation of delay was decided by the order of District Superintendent of Land Records and there is no order of admission of appeal. In view thereof, the issue which will have to be examined by the Deputy Director of Land Records will be as regards the condonation of delay. The Deputy Director of Land Records to decide the said issue in accordance with law and on its own merits.

11. As this Court has held that the appeal is maintainable before the Deputy Director of Land Records, Appeal No. SR 4813 of 2019 is restored to the file of Deputy Director of Land Records.

12. As by an interim order, appeal proceedings before the District Superintendent of Land Records were stayed, the stay is extended for a further period of three weeks from the date of uploading of this order.

13. Petition stands allowed in above terms.

[Sharmila U. Deshmukh, J.]