



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12965 OF 2023

- | | | | |
|----|--------------------------------------|---|-----------------------|
| 1. | Sadanand Tukaram Suroshe |] | |
| | Age 75 yrs., |] | |
| | R/at. Bhoj, Dahiwali, Post Kulgaon , |] | |
| | Taluka Ambernath, District Thane. |] | ...Petitioner. |

Versus

- | | | | |
|----|---|---|--|
| 1. | Ashok Gajanan Suroshe Age 63 yrs., |] | |
| | R/at. Bhoj Dahiwali, Post Kulgaon, |] | |
| | Taluka Ambernath, District Thane. |] | |
| | |] | |
| 2. | Dilip Gajanan Suroshe |] | |
| | Age Adult. |] | |
| | R/at. Bhoj Dahiwali, Post Kulgaon, |] | |
| | Taluka Ambernath, District Thane. |] | |
| | |] | |
| 3. | Taibai Gajanan Suroshe |] | |
| | Age Adult. |] | |
| | R/at. Bhoj Dahiwali, Post Kulgaon, |] | |
| | Taluka Ambernath, District Thane. |] | |
| | |] | |
| 4. | Mandabai Gajanan Suroshe @ Mandabai |] | |
| | Bhau Gharat |] | |
| | Age Adult. |] | |
| | R/at. Borivali, Post Mhasa. |] | |
| | Taluka Murbad, District Thane. |] | |
| | |] | |
| 5. | Nandabai Gajanan Suroshe @ |] | |
| | Nandabai Balaram Jadhav |] | |
| | age Adult, R/at : Morivali Gaon, |] | |
| | Post Ambernath, District Thane. |] | |
| | |] | |
| 6. | The Sub-Divisional Officer, Ulhasnagar, |] | |
| | Divisional Ulhasnagar, District -Thane. |] | |
| | |] | |
| 7. | The Additional Collector, Thane. |] | |

8. The State of Maharashtra.] ...Respondents.

ALONG WITH
WRIT PETITION NO. 13957 OF 2023

1. Jitendra Sakharam Patil]
Age 38 years, Occ. Agriculture,]
R/o. Kolegaon, Dombivili (East), Tal,]
Kalyan, Dist. Thane 413213] ...Petitioner.

Versus

1. Vithabai Dashrath Patil]
Age 68 years, Occ. Homemaker]
2. Vijay Kundalik Patil]
Age: 57 years, Occ. Agriculture]
3. Sudhakar Kundalik Patil, Age: years,]
Occ. Agriculture]
4. Naresh Kundalik Patil]
Age years, Occ. Agriculture]
5. Archana Vilas Patil]
Age: years, Occ. Agriculture]
6. Sanjay Vasant Patil]
Age: years, Occ. Agriculture]
Respondent No.2 for himself And as a]
Power of Attorney Holder for]
All R/o Kolegaon, Dombivli (East),]
Tal. Kalyan, Dist. Thane 413213]
7. Vasant Sitaram Patil]
Since deceased, through L.Rs.]
7A. Sanjay Vasant Patil]

- | | | |
|-----|---|-------------------|
| | Age: years, Occ. Agriculture |] |
| | R/o Kolegaon, Dombivli (East), Tal. Kalyan, |] |
| | Dist. Thane 413213 |] |
| | |] |
| 7B. | Shantabai Vasant Patil |] |
| | Age: years, Occ. Agriculture |] |
| | R/o Kolegaon, Dombivli (East), Tal. Kalyan, |] |
| | Dist. Thane 413213 |] |
| | |] |
| 8. | Sub – Divisional officer, Kalyan |] |
| | |] |
| 9. | Additional Collector, Thane |] |
| | |] |
| 10. | State of Maharashtra |] ...Respondents. |

ALONG WITH
WRIT PETITION NO. 15763 OF 2023

- | | | |
|----|---|---|
| 1. | Sudam Harishchandra Karale |] |
| | Age : 68 yrs., Occ : Agri., |] |
| | |] |
| 2. | Ramesh Harishchandra, Karale |] |
| | Age : 61 yrs., Occ : Agri., |] |
| | |] |
| 3. | Balaji Harishchandra Karale |] |
| | Age : 54 yrs., Occ : Agri., |] |
| | |] |
| 4. | Tanaji Harishchandra Karale |] |
| | Age : 48 yrs., Occ : Agri., |] |
| | Petitioner nos.1 to 4 all |] |
| | R/at. Belvali Badlapur (West), |] |
| | Tal. Ambarnath District - Thane |] |
| | |] |
| 5. | Indira Arun Patil |] |
| | Age : 47 yrs., Occ : Agri., |] |
| | R/at. Patil-Wadi, Near DNC High School, |] |
| | Nandivali Road, Nandivali, |] |
| | Ulhasnagar, Thane |] |
| | |] |
| 6. | Vimal Lahu Patil |] |

Age : 57 yrs., Occ : Household,
R/at. Nandivali, Taluka Ulhasnagar,
District - Thane

]]]
]]]
] ...Petitioner.

Versus

1. Kailash Pandharinath Shinde
Age : 33 yrs., Occ : Agri.,
R/at. Aasalpada, Tal. Karjat,
District-Raigad

]]]
]]]
]]]

2. Vinod Pandharinath Shinde
Age 26 yrs., Occ : Agri.,
R/at. Aasalpada, Tal. Karjat,
District-Raigad

]]]
]]]
]]]

3. Anita Pandit Tambe
Age : 35 yrs., Occ : Housewife,
Kudsavare, Tal. Ambernath,
District - Thane

]]]
]]]
]]]

4. Rekha Kamlakar Rane
Age : 29 yrs., Occ : Housewife,
R/at. Eranjad, Badlapur [West]

]]]
]]]
]]]

5. Sushma Mahesh Shelke
Age : 27 yrs., Occ : Housewife
R/at. Talawade, Taluka Karjat,
District Raigad

]]]
]]]
]]]

6. Suman Vasant Mhaskar,
Age : 60 yrs., Occ : Housewife
R/at. Mhaskar Niwas, Hetkar Aali,
Neral Karjat Road, Neral,
Taluka Karjat, District Raigad

]]]
]]]
]]]
]]]

7. Sub-Divisional Officer, Ulhasnagar, District
Thane

]]]
]]]
]]]

8. Additional Collector, Thane

] ...Respondents.

ALONG WITH
WRIT PETITION NO. 15283 OF 2023

- | | | |
|----|-----------------------------------|---|
| 1. | Indubai Gurunath Thanage |] |
| | Age 65 yrs., Occ : Agri., |] |
| | R/at Jambhale, Taluka Ambernath, |] |
| | District Thane |] |
| | |] |
| 2. | Dipak Gurunath Thanage |] |
| | Age 41 yrs., Occ : Agri., |] |
| | R/at. Jambhale, Taluka Ambernath, |] |
| | District Thane |] |
| | |] |
| 3. | Kiran Gurunath Thanage |] |
| | Age 38 yrs., Occ ; Agri., |] |
| | R/at jambhale, Taluka Ambernath, |] |
| | District Thane |] |
| | |] |
| 4. | Sachin Gurunath Thanage |] |
| | Age 34 yrs., Occ : Agri., |] |
| | R/at. Jambhale, Taluka Ambernath, |] |
| | District Thane |] |
| | |] |
| 5. | Lalit Gurunath Thanage |] |
| | Age 32 yrs., Occ : Agri., |] |
| | R/at. Jambhale, Taluka Ambernath, |] |
| | District Thane |] |
| | |] |
- ...Petitioner.**

Versus

- | | | |
|----|----------------------------------|---|
| 1. | Shri. Pandharinath Babu Thanage |] |
| | Age 75 yrs., Occ : Agri., |] |
| | R/at. Jambhale, Post Badlapur |] |
| | Taluka Ambernath, District Thane |] |
| | |] |
| 2. | Shri Nandkumar Babu Thanage |] |
| | Age 65 yrs., Occ : Agri., |] |
| | R/at. Jambhale, Post Badlapur |] |
| | Taluka Ambernath, District Thane |] |
| | |] |

3. Shakuntala @ Surekha Atmaram Bhagat]
Age 70 yrs., Occ :]
R/at. Village Badlapur,]
Taluka Ambernath, District Thane]
4. Sadhana Sudhakar Bhoir]
Age 56 yrs., Occ :]
R/at Eranjad, Post Badlapur,]
Taluka Ambernath, District Thane]
5. Shobha Janardan Mhaskar]
Age 54 yrs., Occ :]
R/at. Village Valivali,]
Taluka Ambernath, District Thane]
6. Ratan Balaram Masane]
Age 53 yrs., Occ :]
R/at. Village Shelu, Taluka Karjat,]
District Raigad]
7. Janardan Sitaram Dabare]
Age 51 yrs., Occ :]
R/at. Jambale, Taluka Ambernath,]
District Thane]
8. Nilima Shyam Bhoir]
Age 49 yrs., Occ :]
R/at Mulgaon, Post Chargaon,]
Taluka Ambernath, District Thane]
9. Hareesh Sitaram Dabare]
Age 46 yrs., Occ :]
R/at Jambhale, Taluka Ambernath,]
District Thane]
10. Vaishali Vijay Dabare]
Age 31 yrs., Occ :]
11. Lavanya Vijay Dabare]
Age 14 yrs., Occ :]
12. Gouri Vijay Dabare]

- Age 12 yrs., Occ :]
]
13. Chetan Vijay Dabare]
Age 10 yrs., Occ :]
]
14. Bharat Ganpat Thanage]
Age 70 yrs., Occ :]
]
15. Gulab Ramchandra Dabare]
Age 66 yrs., Occ :]
Petitioners Nos.10 to 15 R/at. Jambhale,]
Taluka Ambarnath, District Thane]
]
16. Tarabai Balram Dabare]
Age 60 yrs., Occ :]
R/at Mulgaon, Post Chargaon]
Taluka Ambarnath, District Thane]
]
17. Sudam Ganpat Thanage]
Age 65 yrs., Occ :]
R/at. Jambale, Taluka Ambarnath,]
District Thane]
]
18. Kamala Ramdas Patil]
Age 55 yrs., Occ :]
R/at Kohojgaon, Taluka Ambarnath,]
District Thane]
]
19. Baby Manohar Khade]
Age 53 yrs., Occ :]
R/at. Maniwali, Taluka Karjat]
District Raigad]
]
20. Sharada Sharad Thanage]
Age 61 yrs., Occ :]
]
21. Shivaji Sharad Thanage]
Age 41 yrs., Occ :]
]
22. Sarita Babu Thanage]
Age 39 yrs., Occ :]
Petitioners Nos.20 and 22 R/at. Jambhale,]

- Taluka Ambernath, District Thane]
]
23. Suvarna Pralhad Wayle]
Age 37 yrs., Occ :]
R/at. Shiravale, Taluka Ambernath,]
District Thane]
]
24. Sudarshan Ganesh Patil]
Age 35 yrs., Occ :]
R/at. Mangrul, Taluka Ambernath,]
District Thane]
]
25. Sachin Sharad Thanage]
Age 33 yrs., Occ :]
R/at. Jambhale, Taluka Ambernath,]
District Thane]
]
26. Swati Subhash Thanage,]
Age 45 yrs., Occ :]
R/at. 503, Jupiter Heights, Behind Gurudev]
Hotel, Ghorpade Chowk, Katrap, Badlapur,]
Taluka Ambernath Dist Thane]
]
27. Nasruddin Shamsurali Shaikh]
Age 47 yrs., Occ :]
]
28. Ruksana Khatun Nasruddin shaikh]
Age 39 yrs., Occ :]
Petitioners Nos.27 and 28 R/at. Room]
No.301, B-Wing, 3rd floor, Mayuri]
Apartment, Near Bombay Colony, Santosh]
Nagar, Mumbra]
]
29. Vaibhav Genu Pawar]
Age 31 yrs., Occ :]
R/at. House No.2719, Mauli Galli,]
Shrikrushna Nagar, Near Rationing House,]
Ambernath, Taluka Ambernath, District]
Thane]
]
30. Sub-Divisional Officer, Ulhasnagar, District]
Thane]
]

31. Additional Collector, Thane] ...Respondents.

ALONG WITH
WRIT PETITION NO. 15284 OF 2023

- | | | |
|-------|--|---|
| 1. | Jaydas Mangal Banote |] |
| | Age 62 yrs., Occ : Agri., |] |
| | |] |
| 2. | Bhalchandra Mangal Banote |] |
| | Age 46 yrs., Occ : Agri., |] |
| | |] |
| 3. | Yogesh Mangal Banote |] |
| | Age 35 yrs., Occ : Agri., |] |
| | |] |
| 4. | Vandana Dilip Bhoir |] |
| | Age 38 yrs., Occ : Household |] |
| | |] |
| 5. | Chhagan Jhipru Banote |] |
| | Since deceased, through Lrs. |] |
| | |] |
| 5.1 | Pramod Chhagan Banote |] |
| | Age 47 |] |
| | All R/at. Shil, Post Wangani, Taluka |] |
| | Ambernath, District Thane. |] |
| | |] |
| 5.2 | Jyoti Balram Thorave – Since deceased, |] |
| | through Lrs. |] |
| | |] |
| 5.2.2 | Vrushali Dattatray Patil |] |
| | Age 27 yrs., Occ : Household, |] |
| | R/at. Dahivali, Karjat (W), Tal. Karjat, |] |
| | District Raigad. |] |
| | |] |
-] ...Petitioner.

Versus

- | | | |
|----|------------------------------|---|
| 1. | Budhya Malu Shinde |] |
| | Since deceased, through Lrs. |] |
| | |] |

- | | | |
|------|----------------------------------|---|
| 1/1. | Bhagwan Budhaji Shinde |] |
| | Age Adult, |] |
| | R/at. Shil, Post Wangani, |] |
| | Taluka Ambernath, District Thane |] |
| | |] |
| 2. | Vinod Ladku Patil |] |
| | Age Adult, |] |
| | R/at. Sapad, Kalyan West, |] |
| | Taluka Kalyan, District Thane |] |
| | |] |
| 3. | Jayesh S. Shah |] |
| | Age Adult, |] |
| | R/at. Badlapur, Taluka Ambernath |] |
| | District Thane |] |
| | |] |
| 4. | Trambak Balwant Oak |] |
| | Since deceased, through Lrs. |] |
| | Mukunda Trambak Oak |] |
| | Since deceased through LRs |] |
| | |] |
| 4/1. | Shalini Mukund Oak |] |
| | Age Adult, |] |
| | |] |
| 4/2. | Anil Mukund Oak |] |
| | Age Adult, |] |
| | |] |
| 4/3. | Sudhir Mukund Oak |] |
| | Age Adult, |] |
| | |] |
| 5. | Vilas Mukund oak |] |
| | Since deceased, |] |
| | |] |
| 5/1. | Vandana Vilas Oak |] |
| | Age Adult, |] |
| | |] |
| 5/2. | Mayur Vilas Oak |] |
| | |] |
| 5/3. | Manish Vilas Oak |] |
| | |] |
| 6. | Dattatraya Trambak Oak |] |
| | Since deceased, through Lrs |] |
| | Hemlatha Dattatray Oak |] |

- Since deceased, through Lrs]
Satish Dattatray Oak]
Since deceased, through LRs]
]
- 6/1. Sarika Satish Oak]
Age Adult,]
]
- 6/2. Rohan Satish Oak]
Age Adult,]
]
- 6/3. Richa Satish Oak]
Age Adult,]
]
- 6/4. Milind Dattatray Oak]
Age Adult,]
Respondent Nos. 4 to 6/4 R/at/ 63,]
Swapnapurti, Brahmin Ali, Badlapur]
Village, Badlapur (W), Taluka. Ambarnath]
District Thane.]
]
7. Dhanjaya Trambak Oak]
Since deceased, through Lrs]
Padma Dhanjaya Oak]
Since deceased, through Lrs]
Chandrasekhar Dhanjay]
Since deceased, through LRs]
]
- 7/1. Aparna Chandrasekhar Oak]
Age Adult,]
R/at. 438/B, Shaniwar Peth, Sumangal]
Apartment, Building No.1 Block No.2,]
Behind Degaonkar Painter Pune-30.]
]
8. Chhagan Jhipru Banote]
Since deceased, through Lrs.]
]
- 8.1 Alka Chhagan Banote]
]
- 8.2 Prasad Chhagan Banote]
]
- 8.3. Swati Naresh Shelar]
8.1 To 8.3 All R/at. Shil, Post Wangani,]

- | | | | |
|-----|--|---|------------------------|
| | Taluka Ambernath, District Thane |] | |
| | |] | |
| 9. | Sub-Divisional Officer, Ulhasnagar, District Thane |] | |
| | |] | |
| | |] | |
| 10. | Additional Collector, Thane |] | ...Respondents. |

Mr. Vijay Killedar for the Petitioners in all writ petitions.

Mr. A. A. Garge and Mr. Kashyap Bhalerao for Respondent No. 1 to 7 in WP No. 13957 of 2023.

Mr. Manish R. Bohra for Respondent No. 1 to 5 in WP No. 15763 of 2023.

Mr. Pandit Kasar for Respondent No. 1 in WP No. 12965 of 2023.

Mr. G. R. Agrawal and Mr. Shubham Jangam for Respondent No. 1.1 in WP No. 15284 of 2023.

Mr. Ammar Nizami for Respondent No. 29 in WP No. 15283 of 2023.

Mr. Rafiq Khan for Respondent No. 1 to 25 in WP No. 15283 of 2023.

Coram : Sharmila U. Deshmukh, J.

Reserved on : March 13, 2024

Pronounced on : March 28, 2024.

JUDGMENT:

1. Rule. Rule made returnable forthwith and by consent taken up for final disposal.

2. This group of petitions raises common issue as regards exercise of revisional jurisdiction under Section 257 of the Maharashtra Land Revenue Code [for short "MLRC"] and hence the same are taken up for hearing together and decided by this common judgment.

3. At the outset, learned counsel appearing for the private respondents raised an objection as regards the maintainability of petitions, as according to them, the petitioners have an alternate remedy of revision before the State Government. The challenge in the group of petitions is the refusal to exercise the revisional jurisdiction by the Additional Collector involving interpretation of provisions contained in Chapter XIII of the MLRC governing appeals, revisions and review. The order of the Additional Collector cannot be said to have been passed in exercise of powers under Section 257 of MLRC as against which revision would lie to the State Government and as such I have thought it fit to take up the petitions for hearing.

4. For the purpose of factual clarity, which is common in all the Petitions, the facts of Writ Petition No.12965 of 2023 are referred to briefly. The petitioner is the owner of agricultural land and necessary mutation entry was effected in his favour in the revenue records. The private respondents challenged the mutation entry by filing appeal under Section 247 of MLRC and as there was delay of about 41 years 4 months and 20 days in filing the appeal, a separate application was filed seeking condonation of delay bearing RTS/ Condonation of Delay Application No.38 of 2021. The petitioner resisted the application seeking condonation of delay. The Sub Divisional Officer [for short

“SDO”] passed an order dated 31st March 2021 condoning the delay and placed the matter for hearing on merits on 25th January 2022.

5. Being dissatisfied by the order of SDO, the petitioner filed revision application being Revision Application No.1 of 2022 before the Additional Collector under Section 257 of the MLRC. Vide order dated 22nd August 2023, the Additional Collector held that SDO has admitted the appeal for hearing on merits after condoning the delay. It was held that the said order being an interim order passed under Section 251 of the MLRC and as per Section 252 of the MLRC there is no provision of appeal against the said order. The Additional Collector disposed of the application holding that upon conjoint reading of Section 252, Section 257 read with Section 259 of MLRC where there is no appeal provided against an order, the same is final and thus the revision would lie only under Section 257 of the MLRC before the State Government.

6. Identical orders have been passed in each individual petition by the SDO as well as the Additional Collector and it is against the order of Additional Collector declining to exercise the revisional jurisdiction under Section 257 of the MLRC that the present petitions have been filed.

7. Heard Mr. Killedar, learned counsel appearing for the Petitioner in all the petitions, Mr. Garge, learned counsel appearing for Respondent Nos. 1 to 7 in Writ Petition No. 13957 of 2023, Mr. Manish Bohra, learned counsel appearing for Respondent Nos. 1 to 5 in Writ Petition No.15763 of 2023, Mr. Pandit Kasar, learned counsel appearing for Respondent No. 1 in Writ Petition No. 12965 of 2023, Mr. Girish R. Agrawal, learned counsel appearing for Respondent No. 1 in Writ Petition No.15284 of 2023, Mr. Ammar Nizami, learned counsel appearing for Respondent No. 29 in Writ Petition No. 15283 of 2023 and Mr. Rafiq Khan, learned counsel appearing for Respondent No. 1 to 25 in Writ Petition No. 15283 of 2023.

8. Mr. Killedar learned counsel appearing for the petitioner in all the petitions would submit that the issue as regards the maintainability of revision application under Section 257 of the MLRC before the Additional Collector is no longer *res integra* as the same stands decided by a decision of this Court in the case of **Ahmad Ambir Shaikh v. Abdul Rahiman Ambir Shaikh [Writ Petition No.15106 of 2022 decided on 14th December 2022]** wherein this Court has held that as the SDO had condoned the delay and admitted appeal, the only remedy available to the petitioner was to file revision application before the Additional Collector. He would submit that the order of

SDO would indicate that SDO had condoned the delay and listed the appeal for hearing on merits, which is the stage of Sub-Section (2) of Section 255 of the MLRC. He submits that against the order admitting appeal, by virtue of Section 252 of the MLRC no appeal would lie and the remedy is to file a revision under Section 257 of the MLRC. Pointing out to the provisions of Section 257 of the MLRC, Mr. Killedar would submit that the provision empowers the State Government as well as any revenue or survey officer not inferior in rank to the Assistant or Deputy Collector or the Superintendent of Land Records to exercise the power of revision. Pointing out to Sub-Section (4) of Section 257 of the MLRC, he would submit that only in the event an order is passed by the Assistant or Deputy Collector under Sub-Section (1) or (2) of Section 257 of the MLRC, revision is not permissible and in that event it is only the State Government who can modify, annul or reverse the order passed under Sub-Section (1) or Sub-Section (2) of Section 257 of MLRC. He submits that the order of Additional Collector was not an order within the meaning of Sub-Section (1) of Section 257 of the MLRC and therefore the provisions of Sub-Section (4) of Section 257 of the MLRC would not be applicable. He submits that the remedy of revision before the Additional Collector, as held by the learned Single Judge of this Court in the case of ***Ahmad Ambir Shaikh v. Abdul Rahiman Ambir Shaikh (supra)*** is

available to the Petitioners. He would further submit that power under Article 227 of the Constitution Of India can be exercised in case where there is an unjustified refusal to exercise the jurisdiction vested in Court or Tribunal. He draws support from the decision of the Apex Court in the case of ***Shalini Shyam Shetty v. Rajendra Shankar Patil [(2018) 8 SCC 329]***. He would further submit that despite the decision of this Court in the case of a ***Ahmad Ambir Shaikh v. Abdul Rahiman Ambir Shaikh (supra)*** being brought to the notice of Additional Collector, the Additional Collector has declined to exercise the jurisdiction. He would submit that in such an event the conduct in not following the previous decision undermines the respect for law which is contumacious and as such contempt proceedings need to be initiated. He relies upon the decision of the Apex Court in the case of ***Baradkanta Mishra v. Bhimsen Dixit [(1973) 1 SCC 446]***.

9. *Per Contra* Mr. Pandit Kasar, learned counsel appearing for respondent no.1 in Writ Petition no.. 12965 of 2023 submits that against the order passed by SDO under Section 247 of the MLRC, there is a provision of second appeal. He submits that the order of SDO condones the delay and does not admit the appeal and thus remedy of appeal is available. He submits that the provisions of the MLRC provide for two appeals and the revision is also restricted to

two in number. He submits that Sub-Section (1) of Section 247 of the MLRC provides for a remedy of appeal from the decision or order passed by the revenue or survey officer specified in Column 1 of Schedule E. Drawing attention of this Court to Column 1 of Schedule E, Mr. Pandit Kasar would submit that the second appeal against the order passed by SDO would lie before the Collector or the Assistant or Deputy Collector.

10. Without prejudice to the above submission, Mr. Pandit Kasar submits that even if it is considered that remedy of appeal is not available, the remedy for petitioner is to file a revision before the State Government. He points out Sub-Section (4) of Section 257 of the MLRC and submits that Sub-Section (4) of Section 257 of the MLRC empowers only the State Government to modify, annul or reverse any order passed by any revenue or survey officer. He relies upon the decision of the Apex Court in the case of ***Gurudassing Nawoosing Panjwani v. State of Maharashtra [(2016) 2 SCC 213]*** to support the proposition that second revision is maintainable before the State Government.

11. Mr. Kasar would also distinguish the decision of the learned Single Judge of this Court in the case of ***Ahmad Ambir Shaikh v.***

Abdul Rahiman Ambir Shaikh (supra) and would submit that the specific observation of the learned Single Judge was that SDO had condoned the delay and admitted the appeal and the same was without hearing the parties. He submits that it is in the facts of that case that the learned Single Judge held that the revision was maintainable before the Additional Collector.

12. Mr. Girish Agrawal, learned counsel appearing for respondent no.1(1) in Writ Petition No.15284 of 2023 would submit that the order of Additional Collector would indicate that Additional Collector has construed the order of SDO as an admission of appeal and in that case revision will not lie before the Additional Collector. He submits that the remedy of petitioner is to file a revision before the State Government against the order of SDO. He submits that even if the order of SDO is an order of condonation of delay, the revision lies before the State Government in view of sub Section (4) of Section 257 of MLRC.

13. Mr. A. A. Garge, learned counsel appearing for respondent nos. 1 to 7 in Writ Petition No. 13957 of 2023 submits that remedy of the petitioner is to file a revision before the State Government as the order of Additional Collector makes it clear that by its order, the SDO

has admitted the appeal.

14. Mr. Manish Bohra, learned counsel appearing for respondent nos.1 to 5 in Writ Petition No.15763 of 2023 would supplement the submissions by pointing out Section 259 of the MLRC which provides that where no appeal lies from any decision or order, it is the State Government who can exercise the power under Section 257 of the MLRC. He submits that by the said order, SDO had condoned delay and admitted the appeal as against which appeal would not lie under Section 252 of the MLRC and upon a conjoint reading of sections 252, 257 and 259 of the MLRC it is clear that remedy is to approach the State Government in revision. He relies upon the decision of this Court in the case of ***Ramanlal Kachardas Bakliwad v. Niyaj Mohammad Khan Akhil Khan [Writ Petition No. 1461 of 2023 decided on 10th December 2003]***.

15. I have considered the rival submissions and perused the record in particular the order of SDO and Additional Collector.

16. The issues which arise for consideration are:

(a) Whether the remedy of revision is available to the Petitioners against the order of the Sub Divisional Officer under Section 257 of MLRC?

(b) If the remedy of revision is available, whether the revision will lie before the Additional Collector or the State Government?

17. It is not necessary to go into the facts of each individual case, however, the order of SDO will have to be examined to ascertain the actual purport of said order - whether the order merely condones the delay or goes one step forward and admits the appeal as different consequences ensue in former and latter case.

18. The SDO has adjudicated the application numbered as RTS/Condonation of Delay Application No.38 of 2021. The SDO has considered briefly merits of the case and has considered the decision of the Apex Court in the case of ***Collector Land Acquisition v. Katiji passed in Civil Appeal No. 460 of 1987*** dealing with the issue of condonation of delay. It has been held that the matter is required to be dealt on merits and if the delay is not condoned, the appellant would suffer irreparable loss, however, if the delay is condoned, no prejudice will be caused to the respondents. The operative part of the order is that the Appellant's prayer being *prima facie* acceptable is entitled to get the delay condoned and the delay is condoned and is fixed for hearing on merits. Section 251 of MLRC provides for

admission of appeal after period of limitation. The order of SDO indicates that after condoning the delay, the Appeal has been admitted and listed on 25th January, 2022 for the purpose of hearing on merits, the matter was listed on 25th January 2022.

19. Under the provisions of Section 247 of the MLRC, against the order passed by a revenue or survey officer, appeal is provided to an appellate authority specified in Column 2 of Schedule E to the MLRC. The application before SDO was filed under the provisions of Section 247 of the MLRC. Section 250 of the MLRC prescribes a period of limitation of 60 days if the decision has been passed by an officer inferior in rank to a Collector or a Superintendent of Land Records and in other cases, limitation of 90 days is prescribed. Section 251 of the MLRC provides for admission of an appeal after the period of limitation when the appellant satisfies the Officer or the State Government to whom or to which appeal or application is preferred that he has sufficient cause for not presenting the appeal or application as the case may be within such period.

20. It would be beneficial to reproduce the provisions of Section 250 to 255 and 257 of the MLRC, which read thus :

“250. Periods within which appeals must be brought.

No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Land Records in their respective departments; nor after the expiration of ninety days in any other case. The period of sixty and ninety days shall be counted from the date on which the decision or order is received by the appellant.

In computing the above periods, the time required to obtain a copy of the decision or order appealed against shall be excluded.

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.

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.

253. Provision where last day for appeal falls on Sunday or holiday.

Whenever the last day of any period provided in the Chapter for presentation of an appeal or an application for review falls on a Sunday or other holiday recognised by the State Government the day next following the close of the holiday shall be deemed to be such last day.

254. Copy of order to accompany petition of appeal.

Every petition for appeal, review or revision shall be accompanied by a certified copy of the order to which objection is made unless the production of such copy is dispensed with.

255. Power of appellate authority.

(1) The appellate authority may either admit the appeal or, after calling for the record and giving the appellant an opportunity to be heard, may summarily reject it.

Provided that, the appellate authority shall not be bound to call for the record where the appeal is time-barred or does not lie.

(2) If the appeal is admitted, a date shall be fixed for hearing and notice thereof shall be served on the respondent.

(3) After hearing the parties, if they appear, the appellate authority may, for reasons to be recorded in writing, either annul, confirm, modify, or reverse the order appealed against, or may direct such further investigation to be made, or such additional evidence to be taken, as it may think necessary; or may itself take such additional evidence; or may remand the case for disposal with such direction as it thinks fit.

(4) Any appeal filed before any revenue or survey officer shall be disposed of within a period of one year from the date on which such appeal is filed:

Provided that, any such appeal filed before 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 further that, in exceptional circumstances, for reasons to be recorded in writing, the period for disposing of any appeal 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 Appellate authority.

Provided also that, where the appellate 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 extension of time for disposing of any such proceeding as it may deem fit, after recording reasons therefor in writing.

(5) If the appellate authority fails without sufficient cause, to dispose of any appeal within the period specified in sub-section (4), he shall be liable for disciplinary action in accordance with the concerned disciplinary rules applicable to him.

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 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 matter in which neither a formal nor a summary inquiry has been held.

(3) If in any case, it shall appear to the State Government, or to any officer 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 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 or 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) 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, annul or reverse any such order issued under sub-section (1) or (2)."

21. The heading of Section 251 of the MLRC is *"Admission of appeal after the period of limitation"* and the Section provides that an appeal may be admitted after the period of limitation upon sufficient cause being shown. Section 252 of the MLRC provides that no appeal shall lie from an order admitting appeal under Section 251 of the MLRC. The procedure which has been prescribed under Section 251 of the MLRC for admission of an appeal after the period of limitation does not provide for any separate procedure for listing of appeal for admission after the delay has been condoned. Against the background of Sections 250 and 251 of the MLRC, if the order of SDO is examined, it is evident that vide the said order, the Appeal is admitted after condoning the delay.

22. Now, coming to the provisions of Section 255 of the MLRC, the heading of the said Section is *"Power of appellate authority"*. The Section provides that the appellate authority may either admit the appeal or after calling for the record and giving the appellant an opportunity of being heard, may summarily reject it and if the appeal is admitted, a date shall be fixed for hearing and notice thereof shall be served on the respondent. I find considerable force in the submission of Mr. Killedar that by virtue of the delay being condoned and the appeal being admitted, the appeal was placed at the stage of

Sub-Section (2) of Section 255 of the MLRC as a date was fixed for hearing on merits. The Additional Collector in revision against the order of SDO has observed that the SDO after condoning the delay has admitted the Appeal for hearing on merits.

23. 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 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.

24. 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. The order of SDO being an order of subordinate revenue or survey officer, the State Government or

Assistant or Deputy Collector could have exercised powers under Sub-Section (1) of Section 257 of the MLRC. Sub-Section (4) of Section 257 of the MLRC when read carefully, provides that revision of the order passed under Sub-Section (1) or Sub-Section (2) of Section 257 of the MLRC by any officer referred to in the said Sub-Sections shall not be permissible and it shall be lawful only for State Government to modify, annul or reverse any such order passed under sub Section (1) or (2). 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.

25. 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. The Additional Collector has refused to exercise the jurisdiction and the same cannot be said to be an order passed in exercise of power conferred under Sub-Section (1) of Section 257 of the MLRC.

26. Taking into consideration Sub-Section (1) of Section 257 of the MLRC, the remedy of revision before the Additional Collector would have been available to the Petitioner but for the provisions of Section 259 of the MLRC. Section 259 of MLRC attaches finality to the orders as against which no appeal lies and curtails the powers of the revenue or survey officers under Sub-Section (1) of Section 257 from entertaining revision against such orders. Against an order which attains finality in as much there is no provision for appeal, it is the State Government alone which has the power to modify, annul or reverse any such decision order under provisions of Section 257.

27. 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.

28. It is the Petitioner's own case that the order of the SDO admits the appeal after condoning the delay and as such as In the present case, as the provisions of Section 252 of the MLRC prohibit the filing of appeal from an order admitting appeal under Section 251 of the MLRC, by virtue of Section 259 of the MLRC, the powers under Sub-Section (1) of Section 257 of the MLRC can be exercised only by the State Government and not by the Additional Collector. The order of Additional Collector refusing to exercise its revisional jurisdiction

based on reading of Sections 252, 257 and 259 of MLRC thus cannot be faulted with.

29. In the case of ***Ahmad Ambir Shaikh (supra)***, heavily relied upon by learned counsel appearing for the Petitioner, learned Single Judge of this Court has held in the facts of that case that as the delay was condoned by the SDO and appeal was admitted, the remedy available to the Petitioner was to file a revision application. Upon a reading of the said decision, it appears that the provisions of Section 259 of the MLRC were not brought to the notice of the Court and as such learned Single Judge has considered the provisions of Section 257 of the MLRC and has held that the remedy was to file a revision before the Additional Collector. The decision was rendered without noticing the provisions of Section 259 of the MLRC, and is thus *per incuriam*.

30. As regards the decision in the case of ***Shalini Shyam Shetty (supra)***, the said decision was relied upon in support of the submission of learned counsel appearing for the Petitioner that in case of unjustifiable refusal to exercise jurisdiction, petition under Article 227 of the Constitution is maintainable. There is no quarrel with the said proposition.

31. The next decision relied upon by Mr. Killedar is in the case of ***Baradkanta Mishra (supra)*** in support of his submission that despite the order of this Court in the case of ***Ahmad Ambir Shaikh (supra)***, the Additional Collector has not followed the said decision which was

brought to her notice and therefore amounts to contempt. As I have already held that the remedy available to the the Petitioner is by way of revision to the State Government, it is not necessary to consider the said decision.

32. The decision in the case of ***Gurudassing Nawoosing Panjwani (supra)***, was sought to be relied upon by learned Advocate Pandit Kasar to support his submission that the second revision is maintainable before the State Government. In the present case what is required to be considered is whether against the order of SDO admitting the appeal, revision would lie before the State Government or the Additional Collector. There is no issue as regards the maintainability of second revision and as such the said decision is inapplicable to the facts of present case.

33. In the case of ***Balwant Narayan Thale v. Pushplata Vasudev Patil [W.P. No. 8673 of 2016 decided on 9th January 2017]*** relied upon by learned Advocate Mr. Girish Agrawal, in the facts of that case, learned Single Judge had held upon the reading of the order of SDO that the delay had been condoned however the operative part was bereft of any direction and the appeal has been admitted. In that case, learned Single Judge held that as there was no order admitting the appeal, the power under Section 257 of MLRC could be exercised. In the present case, it is the Petitioner's own case that the appeal has been admitted by SDO by placing the appeal at the stage of sub-

Section (2) of Section 255 of the MLRC. The Additional Collector has also observed that the order of SDO admits the appeal after condoning the delay. That being the position, the decision in ***Balwant Narayan Thale (supra)*** is inapplicable to the facts of present case.

34. Next decision is in the case of ***Ramanlal Kachardas Bakliwad (supra)*** which is relied upon by learned Advocate Mr. Manish Bohra. In that case, learned Single Judge after considering the provisions of Sections 251, 252 and 259 of MLRC has held that the revision would lie before the State Government. In that case, the Petitioner had filed revision before the State Government, however, the State Government advised the Petitioner to file revision before the Superintendent of Land Records. While setting aside the said order, this Court held that no appeal lies from an order admitting appeal and the only remedy is of revision.

35. Having regard to the conspectus of the above discussion, the issues framed for consideration are answered as under :

(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.

36. In view of the issues answered accordingly, the order of Additional Collector holding that revision under section 257 of MLRC would lie before the State Government cannot be faulted.

37. Petitions stand dismissed. Rule is discharged.

38. In view of the disposal of Writ Petitions, Civil/Interim Applications taken out in these Petitions do not survive and the same are disposed of.

[Sharmila U. Deshmukh, J.]

39. At this stage, request is made for extension of ad-interim relief which are operating in favour of the petitioner for a period of four weeks to approach the State Government by filing the revision application under Section 257 of the Maharashtra Land Revenue Code, 1966. The request is opposed by the learned counsel appearing for the Respondent No.1 contending that the wrong remedy had been adopted and as such, the stay cannot be to their detriment. As there is already ad-interim relief operating since 2023 and the request is made for the purpose of filing the appropriate application before the State Government, the stay is extended for a period of four weeks.

40. The petitioners are directed to give notice of hearing before the State Government to the Respondent No.1 in advance.

[Sharmila U. Deshmukh, J.]