

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18645 OF 2024.

Budha Sambhu Mahar (Kadam)
since deceased through LRs and Others. ...Petitioners.
Versus
State of Maharashtra and Others. ...Respondents.

Mr. Vishwajeet S. Kapse for the Petitioner.
Ms. A. A. Nadkarni, AGP for Respondent-State.

Coram : Sharmila U. Deshmukh, J.
Date : December 17, 2024.

P. C. :

1. By the present petition, the challenge is to the order dated 15th March, 2024 passed by Under Secretary, State Government on the proposal which was sent by the Collector by communication dated 2nd February, 2024 in respect of Mutation Entry Nos.576 and 2119 and for cancellation of Mutation Entry No.576 and restoration of Mutation Entry No.501. By the said order, the Under Secretary has taken into consideration the provisions of Section 257 of Maharashtra Land Revenue Code, 1966 [for short, "**MLRC**"] and that the State Government has the power and therefore, the Application of the Petitioner is rejected.
2. Learned counsel appearing for the petitioner would submit that against the order refusing to condone the delay by the Sub-Divisional

Officer, the appeal was preferred before the Collector and the proceedings were remanded to the S.D.O. which was not considered and by reason of communications between the Sub-Divisional Officer, the Collector and the State Government and without granting the opportunity of being heard, the Application has been rejected.

3. *Per contra* learned AGP would tender the *Roznama* and would submit that *Roznama* would indicate that on 6th November, 2023, the Petitioner and the Respondent were heard and thereafter, the matter was closed for decision. She submits that in view of the fact that under Section 257, it is only the State Government who would have the power to interfere, the Sub-Divisional Officer has thereafter, not passed any order and it is the State Government who has exercised powers and rejected the Application.

4. I have considered the submissions and perused the records.

5. It is undisputed that there was a remand of the proceedings from the Collector to the Sub-Divisional Officer to be considered afresh. After the remand, *roznama* would indicate that on 6th November, 2023, Advocate for the parties were present and have advanced submissions and the matter was closed for decision. Admittedly, there is no order which is passed by the Sub-Divisional Officer and instead matter was referred to the higher authorities and thereafter, the State Government by the impugned order dated 15th March, 2024 has

rejected the Application. As the proceedings were being conducted by the S.D.O, it was expected that the decision whether it had the jurisdiction or not under Section 257 of MLRC was required to be adjudicated by the S.D.O. After closing the matter for decision, it was incumbent upon the Sub-Divisional Officer to pass an appropriate order, however, instead the matter was referred to the higher authorities and Under Secretary without any notice to the petitioner and without hearing him has passed the impugned order dated 15th March, 2024 which is impermissible.

6. Considering that no order has been passed by the SDO, Mr. Kapse would submit that an opportunity be given to place written submissions on record as regards the jurisdiction of Sub-Divisional Officer before the order is passed. As the parties were not heard on the said aspect, the petitioner is permitted to place its written submissions on record and thereafter, the Sub-Divisional Officer is directed to pass an order in accordance with law.

7. Considering that though the matter was closed for order, no order was passed by S.D.O and the order came to be passed by Under Secretary without giving an opportunity of hearing to the petitioner, the impugned order dated 15th March, 2024 is quashed and set aside. It is open for the Sub-Divisional Officer to rehear the matter if so required and thereafter, pass an appropriate decision. In event,

rehearing is not granted, the petitioners have the liberty to place written submissions on record. After the written submissions are placed on record, the SDO is directed to pass appropriate order in accordance with law.

8. Writ Petition is disposed of in the above terms.

[Sharmila U. Deshmukh, J.]