



4666-2023

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4666 OF 2023

(Ratnakar Bapurao Kalbande & Ors. Vs. Additional Commissioner, Nagpur & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. D.L. Dharmadhikari, Counsel for the petitioners.
Mr. A.M. Kadukar, A.G.P. for respondent nos. 1 to 3 and
9/ State.
Mr. Nitin Bhishikar, Counsel for respondent no.5.
Mr. A.A. Dhawas, Counsel for respondent no.7.

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CORAM : ANIL L. PANSARE, J.
DECEMBER 16, 2024

On 30/9/2024, following order was
passed :

"Heard.

2. *The learned Counsel for Respondent No.7 submits that the order impugned having been passed under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short, 'the Code') by the Respondent No.1 – Additional Commissioner, the appropriate remedy will lie before the State Government under Section 257 of the Code.*

3. *The learned Counsel for Petitioners submits that he will clarify this position and justify filing Petition on next date.*

4. *List the Petition in the week commencing from 14th October, 2024."*

2] The learned Counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai And Others [(1998) 8 SCC 1]* to contend that alternate remedy is not a bar to entertain a writ petition. The Supreme Court has held that High

Courts have always imposed self restrictions where an effective and efficacious remedy is available, however, there is no bar, at least in three contingencies, namely, where a writ petition has been filed for enforcement of any of the fundamental rights or where there has been a violation of principles of natural justice or where the order or proceeding is wholly without jurisdiction or vires of an Act is challenged.

3] This law is well settled, and in this context, a query made as to in which category the petitioners fit in, to which the learned Counsel for the petitioners submits that the authorities below have not followed the principles of natural justice to the expectation of the petitioners. Thus, it is not the case of the petitioners that they were not given opportunity of hearing.

4] The learned Counsel for the petitioners has then referred to the judgment of a Co-ordinate Bench of this Court in the case of *Shri Abdul Shahid s/o Abdul Khalik Patel (Tarique Patel) Vs. Shri Abdul Rab s/o Abdul Mabud Patel & Ors. [Writ Petition No. 5478/2016 decided on 19/12/2019]*, wherein the Co-ordinate Bench, after going through various authorities, has held that remedy under Section 257 of the Maharashtra Land Revenue Code, 1966 (for short “the Code”) could not be said to be an alternative efficacious remedy so as to claim that a writ petition was not maintainable.

5] True it is that remedy under Section 257 of the Code may not be said to be an alternative efficacious remedy, however, the order impugned has been passed by

the Divisional Commissioner entertaining appeal under Section 247 of the Code against the order passed by the Sub-Divisional Officer, Nagpur. Such being the status, the order passed by the Divisional Commissioner is appealable in terms of Section 248 of the Code, which reads thus :

“248. An appeal shall lie to the State Government from any decision or order passed by a Commissioner or by a Settlement Commissioner or by a Director of Land Record, or by a Deputy Director of Land Records invested with power of Director of Land Record except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.”

6] As could be seen, appeal against the order of Commissioner shall lie to the State Government except in a case where order has been passed by the authority below in an appeal.

7] In the present case, the Sub-Divisional Officer was performing duties of the Collector and has not passed order in appeal but he was the first authority who has dealt with the dispute under question.

8] In the circumstances, since statutory appeal under Section 248 of the Code is provided against the order of Commissioner, I am of the considered view that the petitioners have an alternative efficacious remedy available and, therefore, they ought to have filed appeal before the State Government.

9] At this stage, the learned Counsel for the petitioners seeks permission to approach the State

Government under Section 248 of the Code. Permission is granted.

10] The petition is accordingly disposed of with liberty as prayed for.

11] Needless to say that benefit under Section 14 of the Limitation Act, 1963, will be extended to the petitioners.

(ANIL L. PANSARE, J.)

Sumit