2025:BHC-AUG:14240

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8977 OF 2024

DHANRAJ TANKU PATIL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. G. S. Rane, Advocate for the petitioners
Mrs. M. N. Ghanekar, AGP for the respondent/State

AND

WITH WRIT PETITION NO. 8978 OF 2024

DHANRAJ TANKU PATIL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mrs. M. N. Ghanekar, AGP for the respondent/State

CORAM : R. M. JOSHI, J.
DATE : 9th MAY, 2025

PER COURT :-

1. While challenging the orders impugned dated 21/06/2024 passed by Principal Secretary and Special Officer on duty, Revenue and Forest Department, Mantralaya, Mumbai in exercise of powers under Section 257 of the Maharashtra Land Revenue Code (for short ‘the Code’), it is a case of the petitioner that second revision filed under the provisions of Section 257 of the Code is not tenable before any other officer but for the Minister concerned of the State Government.

2. By consent of both sides, these petitions are heard finally at the stage of admission and decided by common order.

3. The relevant facts necessary for the determination of these petitions are narrated in brief as under:

(i) Petitioner No.2 is the owner of the tractor which was in the custody of the petitioner No.1 at the relevant time. It was alleged that on 11/09/2020 the unlawful extraction of sand was done with the help of tractors bearing registration Number MH 19-BG-1475 and MH-19-BG-3329. A panchnama was drawn. Show cause notice issued to the petitioner No.1 as to why penalty of Rs.1,34,683/- each should not be imposed. He was called upon to submit explanation within a period of three days. It was a case of the petitioner that petitioner No.1 was transporting the sand from one place to another for the government work of concretization of village road. It is further claimed that Machale Group Grampanchayat has paid royalty towards the transportation. Petitioner No.1 responded to show cause notice denying the allegations and placing his contention on the record. Tahasildar, Chopda passed orders dated 04/03/2021 imposing penalty of Rs.1,34,683/- each. Petitioner preferred appeals being RTS Appeal Nos. 18/2021 and 19/2021 before SDO, Chopda which came to be dismissed by order dated 20/09/2021. An appeal was filed under Section 247 of the Code before the Additional Collector, Jalgaon in Appeal Nos 160/2021 and 162/2021 which resulted into dismissal thereof on 30/03/2022. Against these orders the revisions were preferred under Section 257 of the Code before the Additional Commissioner, Nashik Division Nashik. In both proceedings, Revisional Authority directed to the Tahasildar, Chopda to hear the proceeding and to pass fresh order of recovery of penalty from the petitioners. Being aggrieved by these orders proceeding bearing No. Gaukhanij-32/1223/Pra. Kra.455/Kha-2 was preferred before the State Government. Principal Secretary and Special Officer on duty, Revenue and Forest Department entertained the said revision and rejected the same by impugned order dated 21/06/2024. Hence, these petitions.

4. Learned counsel for the petitioners without going to merits of the case of the petitioners submits that in view of the provisions of Section 257 of the Code, the second revision is entertaintenable by State Government i.e. the Minister and that there cannot be any delegation of powers to the other officers. It is his submission by referring to the provisions of Section 257 of the Code and judgment of the Hon'ble Supreme Court in case of ***Gurudassiing Nawoosing Panjwani Vs. State of Maharashtra and Ors., 2015 AIR SCW 6277*** that it is only the Minister concerned of the State Government can entertain second revision to satisfy the legality and propriety of the order passed by the Revenue

Officer. He has also placed reliance on the judgments of Coordinate Bench of this Court in case of ***Rashtriya Shikshan Sangh, Sidhewadi and others Vs. State of Maharashtra and others, 2013(1) Mh.L.J.129*** and in case of ***Sheikh Mohamed Fatemohamed and etc., Vs. Raisuddin Azimuddin Katil and others, AIR 2000 Bombay 353***. Thus it is his submission that the order impugned passed by the Principal Secretary and Special Officer on duty, Revenue and Forest Department is without jurisdiction and be set aside and the matter be relegated back to the Minister for decision of the revision.

5. Learned AGP opposed the petition by contending that by not raising objection before Authority the petitioners have submitted themselves to the jurisdiction of authority under Section 257 of the Act and as such now it is not open for them to take exception to its jurisdiction. It is submitted that considering the business rules it is open for the State Government in exercise of its powers to make rule as provided under Article 166(3) of the Constitution of India and to delegate the business to the officers. It is her submission that in this case also by passing order the Minister concerned has delegated the powers of entertainment of the revision and therefore there is no substance in the present petitions. To support her submission reliance is placed reliance on the judgment of the Coordinate Bench of this Court in case of ***N. K.***

Harchandani Vs. State of Maharashtra and anr., 2006(5) Bom. C.R. 256 and judgment of the Hon'ble Supreme Court in case of ***Kedar Shashikant Deshpande and others Versus Bhor Municpal Council and others, (2011) 2 SCC 654***.

6. At the outset this Court would like to deal with the arguments of learned AGP that the petitioners having not raised objection to the jurisdiction of the Principal Secretary and Special Officer on duty, Revenue and Forest Department and therefore now cannot be permitted to claim so in these petitions is concerned, position of law is settled to say that the parties cannot vest the jurisdiction in any authority which is inherently lacked.

7. At this stage it would be relevant to take note of Section 257 of the Code which reads thus:-

> **"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 subordinate 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, the State Government or such officer shall not vary or reverse any order affecting any question or right between private persons without having to the parties interested notice to appear and to be heard in support of such order:Provided further 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.

[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 of 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) of (2).]"

8. Perusal of above provisions indicate that sub Section 4 which is amended in the year 2016 by Act 11 of Maharashtra, 2016 provides that the revision of an order issued under sub Section 1 or 2 by any officer referred to therein shall not be permissible but for the State Government alone to modify or reverse such order. Thus it is clear that that an embargo is created in entertaining the second revision by any officer mentioned in this provision and the same can be only done by the concerned Minister of State Government.

9. In this regard it would be relevant to take note of observations of the Hon'ble Supreme Court in case ***Gurudassiing Nawoosing Panjwani Vs. State of Maharashtra and Ors.*** (supra) has held in paragraph 32 which reads thus:

"32. Considering the entire scheme of the Code, and the provisions contained in Sections 257 and 259, we are of the definite opinion that the Minister concerned of the State

Government can entertain second revision to satisfy the legality and propriety of the order passed by the Revenue Officer. The Division Bench of the Bombay High Court has elaborately discussed the question and passed the impugned order holding that Section 257 confers jurisdiction to the State Government to entertain its revision against the order passed by any Revenue Officer either in appeal or in revision. We find no infirmity in the impugned order passed by the High Court. Hence, this appeal has no merit which is accordingly dismissed."

10. Reverting back to the facts of the case there is no dispute about the fact that the order came to be passed by SDO in Appeal No. 18/2021 on 20/09/2021 upholding the order of Tahasildar. Against this order an Appeal came to be preferred under Section 247 of the Code before the Additional Commissioner, Jalgaon being Appeal No. 162/2021. This appeal came to be rejected by order dated 30/03/2023. The aggrieved petitioners filed Revision under Section 257 of the Code before the Additional Commissioner. Order came to be passed by Revisional Authority is further challenged by preferring second revision before the State Government. This revision admittedly is not entertained by the Minister but by the Principal Secretary and Special Officer on duty, Revenue and Forest Department.

11. As held herein above that the second revision would not be tenable before any officer referred to in Section 257 of the Code but by the State Government itself. Thus, the second revision preferred against the order passed by the Addl. Commissioner was maintainable before the

Minister and not before his delegatee. The business rules cannot over ride the statutory provision and hence delegation of power to entertain second revision being contrary to sub-section 4 of Section 257 of the Code, is not valid.

12. Apart from this it is relevant to take note of the fact that even otherwise general order issued by the Minister refers to the assignment of the proceeding before the Additional Chief Secretary, Revenue. The Authority which passed order impugned is Principal Secretary and not Additional Chief Secretary. Thus, even on this ground the order passed by the Authority is without jurisdiction and hence cannot sustain.

13. Be that as it may, above discussion indicate that the Second Revision must be entertained and decided by the statute of State Government and the said jurisdiction can not be delegated to any other officer, being not permissible under Section 257(4) of the Code. The orders impugned therefore cannot sustain and hereby set aside. Revision proceeding in question stands relegated to the Minister for the decision afresh in accordance with law.

14. Petitions stand allowed in above terms.

(R. M. JOSHI, J.)

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