

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12405 OF 2024

Ananda Nanasaheb Karanjwane And Ors. ...Petitioners

Versus

Mihir Homes Enterprise LLP And Ors. ...Respondents

Mr. Sujay Palshikar for the Petitioners.

Mr. Saket Mone a/w Mr. Abhishek Salian and Ms. Srushti Thorat i/b
Vidhi Partners for Respondent Nos. 1 to 3.

Mrs. Aloka A. Nadkarni, AGP for Respondent/State.

CORAM : M.M. SATHAYE, J.

DATE : 9th APRIL 2025

(IN CHAMBER)

PC. :

1. This petition poses questions arising out of often-repeated arguments about maintainability of revision application before various Revenue Authorities at various stages under Maharashtra Land Revenue Code, 1966 ('the Code' for short). I find it appropriate to summarize the issue and take the first step in the direction of reaching clarity.

2. By this petition under Article 227 of the Constitution of India, the Petitioners are challenging the Judgment and Order dated 09.10.2023 passed by Respondent No.9 (Additional Collector, Pune) in RTS Revision Application No. 54 of 2023. By the said impugned order, the revision application filed by Respondent Nos. 1 to 3 is allowed,

SNEHA
NITIN
CHAVAN
Digitally signed by
SNEHA NITIN
CHAVAN
Date: 2025.04.15
14:46:21 +0530

thereby setting aside the order dated 04.02.2021 passed by Respondent No.8 [Sub-Divisional Officer ('SDO' for short), Maval, Mulshi Sub-Division, Pune] in RTS Appeal No. SR/257/2019. The effect of the impugned order is refusal to condone the delay of about 57 years in filing appeal and rejection of appeal on that ground.

3. The Petitioner has raised a question of law as to whether the Revision, as filed by Respondent Nos. 1 to 3, could not have been entertained by the Additional Collector. Presently under this order, the aspect of maintainability alone is being considered, as also indicated in my earlier order dated 19.03.2025.

4. Few facts shorn of unnecessary details on the basis of which the issue of maintainability is urged, are as under.

4.1 The dispute between the parties arise in respect of certain mutation entries in respect of old Survey No. 48/2/1B - new Survey No.48/2C at mouje Bavdhan Khurd, Taluka – Mulshi, District – Pune (hereinafter 'the said land' or 'the land in dispute'). According to the Petitioners, their predecessor – Maruti Ganu Deshmukh (Karanjwane) was a protected agricultural tenant in the said land owned by its original owner one Mr. Bhaskar Raghunath Paranjape. Maruti's name was entered accordingly in other rights column under M. E. No. 318. It appears that thereafter name of Maruti was removed and name of one 'Nandram Shankar Karanwane' was entered under M. E. No. 701 dated 08.09.1962. After this mutation entry, various other mutation entries were made. Ultimately the Petitioners challenged the Mutation Entry Nos. 693, 701, 820, 2206, 3664 and 5780 by filing RTS Appeal No. 257 of 2019 in which there was long delay in filing. The Appeal was filed under Section 247 of the Code.

4.2 By order dated 04.02.2021, the concerned SDO passed a composite order thereby condoning the delay as well as admitting the Appeal. This composite order was challenged by Respondent Nos. 1 to 3 initially by filing RTS Revision No. 174/2021 before the Additional Collector Pune, however, this revision was withdrawn on 30.04.2021 and Writ Petition No. 2494 of 2021 was filed. The said Petition was also withdrawn but with liberty to file Revision Application before appropriate Appellate/Revisional Authority. The relevant paragraph No.2 of the order of this Court's dated 20.12.2022 reads as under.

“2. Admittedly, both the learned Advocates appearing for parties are ad-idem that against the impugned order dated 04.02.2021 passed by the Sub Divisional Officer, Maval, Mulshi under the provisions of Section 247 of Maharashtra Land Revenue code, 1966, Revision would lie to the Appellate/Revisional Authority.”

4.3 The Respondent Nos. 1 to 3 thereafter filed RTS Revision No. 54 of 2023, which was heard by the the Additional Collector, who has passed the impugned order, allowing the revision, thereby setting aside composite order of delay condonation and admission of appeal. In these circumstances, the Petitioners have filed this writ petition, raising issue of maintainability of revision application before Additional Collector.

SUBMISSIONS

5. Mr. Palshikar, learned Counsel for the Petitioner submitted that order challenged before the Additional Collector was a composite order of delay condonation and admitting the appeal and therefore, the revision would lie only before the State Government under Section 259

of the Code. He submitted that if this Court comes to the conclusion that order condoning the delay and order admitting the appeal are two different orders, then bar under Section 252 of the Code will not apply and the petition must succeed because revision filed by the Respondent Nos. 1 to 3 will still not be maintainable as an appeal would lie against such order of delay condonation.

6. On the other hand, Mr. Mone learned counsel for the contesting Respondent Nos. 1 to 3, relying on following case laws, made following submissions.

(i) Sadanand Tukaram Suroshe v/s. Ashok Gajanan Suroshe and Ors. (Writ Petition No. 12965 of 2023)

(ii) Ashokrao Ganpati Ghatge and Ors. v/s. Madhavrao Ramchandra Ghatge and Ors. (Writ Petition No. 5561 of 2022)

(iii) Pravin Gajanan Thakur and Ors. v/s. Kalpana Virbhadra Raut and Ors. (Writ Petition No. 5716 of 2024).

(iv) Gurudassing Nawoosing Panjwani Vs. State of Maharashtra & Ors - (2016) 2 SCC 213.

6.1 He submitted that the Court will have to consider Section 259 of the Code to see if the impugned order is an order to which 'finality or conclusivity' is given by the Code, so as to attract exclusive jurisdiction of the State Government to entertain revision.

6.2 He submitted that Section 259 of the Code applies only to such decisions or orders which are expressively made 'final or conclusive' such as those provided under section 52 (2), 124 (1), 137 (4)(b), 142

(3), 165 (2), 218(2) and 270 (2) of the Code, where the Code provides for finality and conclusivity by using specific words such as 'final' and 'conclusive'. He submitted that words used in Section 259 of the Code are important which shows the intention of the legislature and therefore, Section 259 will not apply to order dated 04.02.2021 passed under section 251 of the Code, which does not make it 'final or conclusive'. He submitted that bar under section 252 will not make order under section 251 'final and conclusive' as contemplated under section 259. Therefore, in his submission, the present impugned order was rightly passed under section 257 of the Code. It is further submitted that as settled by the Hon'ble Supreme Court in the case of *Gurudassing Panjwani (supra)*, second revision can always lie before the State Government.

6.3 He submitted that accepting the interpretation made in *Sadanand Suroshe (supra)* and *Pravin Thakur (supra)* would lead to serious consequences whereunder, the State Government would be flooded with revision applications against orders and decision in matters other than those provided under section 259 of the Code. He submitted that the view taken in Judgments of *Sadanand Suroshe (supra)* and *Pravin Thakur (supra)* are *per incurium* Section 259 of the Code.

6.4 He further submitted that there is no concept of 'ministerial act of admission' under section 251 and 'adjudicatory act of admission' under section 255 of the Code, as sought to be made out in the Judgment of *Pravin*

Thakur (supra) and therefore said judgment is *per incurium* section 255 read with section 251 of the Code. He submitted that as against this, the view taken in *Ashokrao Ghatge (supra)* by this Court is the correct view. On these grounds, the revision application filed before the Additional Collector by Respondent Nos. 1 to 3 was justified.

7. The learned Assistant Government Pleader appearing for Respondent Nos. 9 and 10 (State) submitted that remedy available to Respondent Nos. 1 to 3 to challenge the order dated 04.02.2021 was only to file revision before the State Government in view of Section 259 of the Code.

8. Mr. Palshikar, on the other hand, supported the view taken in *Sadanand Suroshe (supra)* and *Pravin Thakur (supra)* and submitted that the said judgments considers the exact issue involved in this matter. It is submitted that even if view as taken in *Ashokrao Ganpati Ghatge (supra)* is accepted by the Court, in the peculiar facts of this case, the revision as filed by the Respondent Nos. 1 to 3 will not lie and appeal will have to be filed and on that count also, he must succeed.

Consideration of views

9. Before the views taken by 3 learned Single Judges of this Court are appreciated, it would be necessary to understand basic facts which were under consideration before the respective Judges. I will not risk narrating the facts and views in my own words. The same be rather reproduced.

10. Facts of the case and view taken in the judgment of *Sadanand Suroshe (supra)*, can be gathered from following paragraphs

thereof :

“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.

xxx

27. Upon conjoint reading of the provision 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.”

[Emphasis supplied]

11. Facts of the case and view taken in the judgment of *Ashokrao Ghatge (supra)* can be gathered from following paragraphs thereof :

“2. It is the case of the petitioner that the name of his father was entered into revenue record in respect of old City Survey No. 1458/4/1,2 and 3 (renumbered as Plot No. 162 as per the

Town Planning Scheme sanctioned by City of Kolhapur, in the year 1979). His name was entered on the basis of statement made by respondent Nos. 1 and 2 and other co-sharers. An order was passed on 10.01.1980 by the City Survey Officer directing name of Ganpati Ishwar Ghatge (father of petitioner) to be entered in the property card of the subject land. According to the petitioners respondents have challenged order dated 10.01.1980 passed by the City Survey Officer by filing an appeal before the Superintendent of Land Records, Kolhapur under Section 247 of the Code. On 30.11.2008 i.e. after the period of 38 years of the said order, appeal came to be filed. An application for condonation of delay was also filed along with the appeal. It is claimed by the petitioners that no reason leave apart sufficient cause has been stated for condonation of delay of 38 years. Pursuant to the receipt of notice petitioner appeared before respondent No.4 and objected to the application for condonation of delay. Respondent No.4 by order dated 01.02.2022 condoned the delay of 38 years. This order was challenged by filing a Revision Application under Section 257 of the code before the respondent No.3 -Deputy Director of Land Records, Pune. This Authority, however, issued impugned communication dated 06.04.2022 holding that he has no authority to entertain the said Revision Application and only remedy available for the petitioners is to file Revision Application before the State Government. Petitioners on various grounds set aside in the petition in paragraph No.7(a)(2)(h) have challenged the impugned order.

xxx

12. Application for condonation of delay and appeal are two

distinct proceedings. The question of order admitting appeal to supersede order of condonation of delay does not arise. One more aspect requires consideration is criterias for condonation of delay and admission of the appeal, which are totally different. As per the settled position of law while condoning the delay the merits of the case cannot be gone into and what is relevant is the sufficient cause being made out for not presenting the proceeding within a period of limitation. As against this, the order of admission of appeal is based upon the application of mind with regard to the merit of the appeal. Thus for this reason also order of condonation of delay cannot be said to have merged into the order of admission of appeal. Thus having regard to the different spheres in which both orders operate, it is not possible to accept that the order of condonation of delay merges in order of admission of appeal. Consequently, even if order of condonation of delay and admission of appeal are passed by a common order for all purposes same are required to be considered as distinct. Hence, it would be open to aggrieved party to challenge order of condonation of delay independently...

xxx

14. It is settled law that the party cannot be denied remedy unless it is specifically barred by the Statute. Considering the different consideration/nature of the application of condonation of delay and admission of the appeal, it cannot be said that order of condonation of delay stood merged in the order of admission of appeal. These are completely two different stages and cannot be called as interim stage of same proceeding. Unless delay is condoned the Appellate Authority

does not get any jurisdiction to entertain the appeal meaning thereby it is only after condonation of delay the appeal become entertainable and proceeding appeal would come into existence thereafter. There is no embargo created by code for filing appeal against the order against the condonation of delay. Thus, to hold that order of condonation of delay is not appealable would amount to coin new provision which is absent in the code. Thus, the said order is not covered under Section 252 of Code and therefore the Petition cannot be called upon to challenge this order only before the State Government, thereby taking away his right of filing revision/appeal before the immediate superior authority to the authority which has passed impugned order."

[Emphasis supplied]

12. Facts of the case and detail view taken in the judgment of *Pravin Gajanan Thakur (supra)* can be gathered from following paragraphs thereof :

"3. Considering the nature of issue taken up for consideration, it is not necessary to narrate facts of the case in detail. Land bearing Gat No.248/1/C admeasuring 0.08 Hecter 60 R at village -Thal, Taluka- Alibag, District-Raigad is the subject matter of the Petition. Mutation Entry No.6866 was certified on 13 May 1960 deleting the name of Krishna Bhaskar Mhatre and entering the name of Gajanan Thakur as holder of the land. Respondent No.1 got aggrieved by the said Mutation Entry No.6866 after period of 65 long years and filed R.T.S. Appeal No.43 of 2023 before the SDO, Alibag challenging the said Mutation Entry. Alongwith the appeal, Respondent No.1 filed application for condonation of delay.

SDO took up only the application for condonation of delay and issued notices to the Respondent therein (Petitioners herein). It appears that Petitioners did not appear before the SDO. After considering the submissions canvassed on behalf of the Appellant/Respondent No.1, SDO proceeded to pass order dated 17 May 2023 allowing the application for condonation of delay holding that the Appeal was required to be decided on merits. He accordingly fixed for the date of hearing in the appeal.

xxx

4. Petitioners got aggrieved by order dated 17 May 2023 passed by the SDO and filed Appeal No.294 of 2023 before the Additional Collector, Raigad. However, the Additional Collector held that the appeal was not maintainable under the provisions of Section 252 of the MLRC and appeal has accordingly been dismissed as not maintainable by order dated 2 August 2023. Petitioners are aggrieved by the order dated 2 August 2023 and have filed the present Petition.

xxx

47. From the above discussion, following principles emerge:

(i) The words 'may be admitted' used in Section 251 of the Code refer to mere acceptance of memo of appeal for registration after condonation of delay and does not envisage performance of any adjudicatory function of 'admission' of appeal as contemplated under sub-section (1) of Section 255.

(ii) Under Section 255(1) of MLRC, the appellate authority performs adjudicatory function of admission or rejection of an appeal by applying its mind to the contents thereof. This is

not done under Section 251 after condonation of delay.

(iii) What is performed by the appellate authority under Section 251 of MLRC is a composite act of adjudicatory function of condonation of delay and ministerial act of acceptance of appeal memo for registration (branded as 'admission'), the two acts being inseparable for the purpose of application of Clause-(a) of Section 252.

(iv) Therefore, clause (a) of Section 252 would apply to both adjudicatory function of condonation of delay, as well as, to the ministerial act of admission of the appeal memo for registration under Section 251 of the Code. Consequently, no appeal would lie against an order of condonation of delay passed by the appellate authority under Section 251 of the Code. However, if the appellate authority refuses to condone the delay, appeal against such order would be maintainable under Section 247.

(v) There is no bar for filing of an appeal against an order passed by the appellate authority under Section 255(1) of the Code either admitting the appeal or summarily rejecting it.

(vi) The only remedy available for the affected party who is aggrieved by an order of condonation of delay is to file a revision before the State Government under Section 259 of MLRC."

[Emphasis supplied]

Reasons for making a reference

13. It is therefore clear that there is considerable difference of opinion about the nature of composite-order which is passed by the

Appellate Authority under Section 251 of the Code. According to the view taken in *Pravin Thakur (supra)* the nature of order is composite act of adjudicatory function of delay condonation and ministerial act of acceptance of appeal memo. On the other hand, in *Ashokrao Ghatge (supra)* a view is taken that even if order of delay condonation and admission of appeal are passed by the common order, for all purposes, they are two distinct orders. Apparently, certain earlier other judgments were not brought to the notice of the Court during hearing of *Sadanand Suroshe (supra)*, but were brought to the notice of the Court during hearing of *Pravin Thakur (supra)*.

14. The genesis of the divergent views lies in the interpretation of order passed under Section 251 of the Code. It provides for delay condonation on satisfaction of the concerned Authority that the Appellant had sufficient cause; but problem seems to start when after delay condonation, appeal is also admitted or kept for hearing by the same order.

15. At the cost of repetition, it is noted that in the case of *Ashokrao Ghatge (supra)*, the learned Judge has taken a view that even if order of condonation of delay and admission of Appeal are passed by a common order, for all purposes, same are required to be considered as distinct. With such a view, even if common order is passed under Section 251 of the Code, different proceeding would lie challenging delay condonation part-of-order and admission part-of-order would face bar under section 252(a). The learned Judge in the said judgment has also clearly held that “to hold that order of condonation of delay is not appealable would amount to coin new provision which is absent in the Code and the order of delay condonation is not covered under section 252 of the Code”.

16. As against this, in the case of *Pravin Thakur (Supra)*, the learned Single Judge has drawn distinction between the order of admission under Section 251 as mere ministerial act and order of admission under Section 255(1) as adjudicatory function, apparently creating two separate classes of admission, leading to different remedies, as stated in clauses (iv), (v) and (vi) of paragraph 47 of the said judgment.

17. In my view, the order of admission of appeal, whether exercised under section 251 or 255 of the Code, cannot be construed as different acts and the power to deal with appeal (admit or hear or summarily reject or allow or dismiss on merits) is entirely under section 255 of the Code and therefore such 'classes of admission of appeal' is not correct interpretation.

18. Also if the interpretation as suggested in *Pravin Thakur (Supra)*, is carefully considered, it would mean that a diligent Appellant, who has filed appeal in time, can file appeal against mere admission of appeal [see clause 47(v)] but the person who has filed the appeal belatedly and in whose case the delay is condoned and appeal is admitted, cannot file appeal [see clause 47(iv)]. Such situation can not be countenanced and needs to be resolved.

19. Power of revision by State Government under sections 257 and 259 of the Code are concurrent powers as explained in *Gurdassing Panjwani (supra)* by the Hon'ble Supreme Court while considering the aspect of 'second revision'. Section 259 provides that in case of certain decision or order 'which are provided to be final or conclusive in the Code', appeal shall not lie and the 'State Government alone' will be able to modify, annul or reverse such order or decision 'under the provisions

of Section 257' of the Code. Therefore, though section 259 goes back to Section 257 for the purpose of drawing power of revision, section 259 carves out a class of cases in which the order or decision can be modified, annulled or reversed by the 'State Government alone'.

20. There is one more aspect. On plain reading of section 252 of the Code, the bar thereunder, in my view, cannot be treated at par with finality or conclusivity given by the statute under section 259 of the Code. There are as many as 7 provisions under the Code shown to me (indicated in the order above) which specifically gives finality or conclusivity to certain orders/decisions/record. Apparently on plain reading of section 259, only in those cases, the revision lies exclusively before the State Government. For the rest of the orders, where the Code does not attach any finality or conclusivity, the Appeal or revision will lie as may be available under Section 247 and 257 of the Code. Therefore all the orders which are barred under 252 of the Code cannot be said to be revisable only before the State Government.

21. Therefore, in my view, whether bar under Section 252 makes the orders listed in its subsections (a) to (c) 'final and conclusive' within the meaning of Section 259 of the Code, is also required to be tested.

22. Interestingly, learned counsel for the Petitioners has placed on record another order dated 01.03.2024 passed by the same Additional Collector (same officer) taking a diametrically opposite view, in similar set of facts, that he does not have jurisdiction to entertain the revision. Indeed any ambiguity in a provision of law leads to uncertainty and unfairness.

23. In the light of what is narrated above, in my view, following questions can be and should be more advantageously heard by the Bench of two judges for reaching finality and consistency, which is desirable in the interest of all concerned. Accordingly I refer/report the following questions for appropriate consideration :

(a) Whether a composite order of delay condonation and admission of appeal (or placing the appeal for further hearing) passed under section 251 of the Code is to be treated as 'a single order combining adjudicatory function and ministerial act' OR 'two distinct orders, one of adjudicatory function of delay condonation under section 251 and second being order of admission (or placing the appeal for further hearing) under section 255 of the Code' ?

(b) If the answer to above question is in the latter part (two distinct orders as asked), then which are the appropriate authorities before whom remedy will lie and which remedy will lie ?

(c) Whether only such orders or decisions or record which are given finality and conclusivity by the Code are revisable by State Government alone under section 259 of the Code OR even orders against which there is a bar of appeal under Section 252 of the Code, are also revisable by the State Government alone ?

24. The Registry is directed to place the papers and proceedings of this petition along with this order before the Hon'ble The Chief Justice for appropriate order, as contemplated under Rule 8 read with 9(C) of the Bombay High Court Appellate Side Rules, 1960.

25. Parties are at liberty to bring this order to the notice of the Registry. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)