

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**ORIGINAL APPLICATION NO.814 OF 2017**

DISTRICT: SOLAPUR

Shri Pradeep Y,. Shelar)
 Shri Gopinath Shankar Hajare ,)
 Saptashrungi Nagar, Mangalvedha,)
 Solapur - 413305.) **.. Applicant**

Versus

- 1) State of Maharashtra, through)
 Chief Secretary, Mantralaya, Mumbai 400032.)
- 2) The Principal Secretary, Revenue and Forest Dept.)
 Madam Kama Marg, Hutatma Rajguru Chowk,)
 Mantralaya, Mumbai 400032.)
- 3) The Divisional Commissioner, Pune Division,)
 Central Building, Pune – 411001.) **..Respondents**

Mrs. Punam Mahajan, the learned Advocate for the Applicant.

Shri N. K. Rajpurohit, the learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 23.10.2017.

PRONOUNCED ON : 02.11.2017

J U D G M E N T

1. Heard Mrs. Punam Mahajan, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Presenting Officer for the Respondents.

2. In this Original Application, the applicant has challenged the order of suspension dated 23.08.2017. The Original Application was filed on 27.08.2017. At the time of issuing the notice of present O.A., this Tribunal has made certain observations, as regards as to what prima-facie transpires, however, the question such as locus standi of intervener, and the aspect of alternative remedy were kept open.

3. At the time of hearing, the learned Advocate for applicant was called to address on the grounds on which the Applicant has based his claim for dispensation of alternate remedy.

4. In order to answer the query as regards alternate remedy, the learned Advocate for applicant has put a finger on the averment contained in para 7. Relevant para is quoted below for ready reference.

“7. Details of the Remedies Exhausted :

The alternative remedy of Appeal is not an efficacious remedy. The alternative remedy of Appeal will not operate as a bar for filing of this Original Application. The Petitioner is challenging the suspension order mainly on the ground that the suspension order is malafide. The impugned order is issued with the approval of this Hon’ble Revenue Minister and therefore no other Minister would interfere with the order of suspension, if the appeal is preferred. The Appeal is address to the Governor, but it is heard by the Minister.

This Hon’ble Tribunal in its order dated 1/6/2015 in O.A. No.357 to 363/2015 has held that whether an O.A. can be entertained against the order of suspension, without appeal being filed against that order will depend on the fact of each case”.

(Quoted from page 14 of OA)

5. During oral submissions, same ground that since the proposal for suspension was approved / sanctioned by the Hon’ble Minister, now the Hon’ble Minister would not examine and decide applicant’s appeal impartially and open mindedly, has been emphatically argued.

6. It has to be kept in mind that when the suspension was proposed and sanctioned, the department’s plea was available before the Minister. Now after the

applicant's appeal would be taken up by the Hon'ble Minister, applicant's side would be eloquently available before the Hon'ble Minister. The material in the form of further enquiry etc. also will be available before the Minister.

7. Hence, since the rules provides for remedy of appeal, it is always open to take recourse to the said remedy of appeal. It cannot be said that the law makers were obvious to the fact that the person approving a proposal of transfer and the appellate authority could be the same, yet when power as appellate authority is vested, the role and duty changes.

8. It has to be borne in mind that duty and power as appellate authority and the jurisdiction of appellate forum stand on different / higher plane.

9. Though it is always possible to argue that the appeal would not be heard impartially, it would be an extremity.

10. By all means, scope for consideration of facts and discretion in appeal is wider. The scope of scrutiny in O.A. would be of superintendence, and hence it may not be as wide as in a statutory appeal.

11. The competency of this Tribunal to entertain the challenge does not necessarily mean to render the remedy of appeal to be per se dispensable.

12. Applicant has to make out a case for dispensation of alternate remedy which applicant has failed. Therefore, due to availability of alternative remedy, the Original Application deserves to be dismissed and it is dismissed. Parties are directed to bear their own costs.

Sd/-
(A.H. Joshi, J.)
Chairman

