

*Arjun*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.2210 OF 2023**

Rajendra Shivkumar Pawar & Ors. ...Petitioners

V/s.

Sanjay Bhau Dalvi & Ors. ...Respondents

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Mr. P. G. Lad, for the Petitioners.

Mr. Yogesh D. Keny, for Respondent Nos.1 to 4.

Mr. S. D. Rayrikar, AGP, for the Respondent Nos.5 & 6-State.

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**CORAM : MADHAV J. JAMDAR, J.**

**DATED : DECEMBER 11, 2023**

**JUDGMENT :**

**1.** Heard Mr. Lad, learned Counsel appearing for the Petitioners, Mr. Keny, learned Counsel appearing for Respondent Nos.1 to 4 and Mr. Rayrikar, learned AGP for the Respondent Nos.5 and 6-State.

**2.** The Petitioners have challenged the Order dated 12th August 2022 passed by the Sub-Divisional Officer, Kalyan Division, Kalyan in Tenancy Appeal No.9 of 2019 (“**impugned Order**”). By the impugned Order, the Sub-Divisional Officer has rejected the Petitioners’ Application by which an objection to the jurisdiction of the Sub-Divisional Officer to hear the said Appeal,

was raised. In the said Appeal, the challenge was to the legality and validity of the Order dated 16th May 2017 passed by the Tahsildar, Kalyan in the proceeding filed under Section 32-P of the *Maharashtra Tenancy and Agriculture Lands Act [Act No. LXVII of 1948]* ("**Tenancy Act**").

**3.** It is the contention of Mr. Lad, learned Counsel appearing for the Petitioners that under Section 74 of the Tenancy Act an Appeal challenging the Order passed by the *Mamlatdar* lies before the Collector. He further pointed out Section 2 (2-E) of the Tenancy Act which defines the term 'Collector', and contended that the Appeal filed before the Sub-Divisional Officer is without jurisdiction and, therefore, not maintainable.

**4.** Mr. Rayrikar, learned AGP has pointed out the Reply dated 13th June 2023 filed on behalf of the Respondent Nos.5 and 6. It is his contention that the Government of Bombay by Circular dated 6th June 1951 empowered the Prant Officer, i.e. Sub-Divisional Officer to exercise all powers of a Collector. He therefore submitted that there is no substance in the challenge to the present Writ Petition. Mr. Keny, learned Counsel appearing for Respondent Nos.1 to 4 also supported the learned AGP.

**5.** For considering the rival submissions, Section 74 of the Tenancy Act is very important. The relevant portion of said Section 74 reads as under:-

**“74. Appeals.—**(1) *An appeal against the orders of the Mamlatdar and the Tribunal may be filed to the Collector in the following cases—*

*(a) to (ma).....*

*(mb) an order under Section 31, 32-F, 32-G, or 32-P*

*(n) to (w).....*

*(2) Save as otherwise provided in this Act, the provisions of Chapter XIII of the Bombay Land Revenue Code, 1879, shall apply to appeals to the Collector under this Act, as if the Collector were the immediate superior of the Mamlatdar or the Tribunal. The Collector in appeal shall have power to award costs.”*

Thus, as per said Section 74, an Appeal against the orders passed by the *Mamlatdar* in the cases wherein orders are passed under Sections which are more particularly set out in the said Section 74, are to be filed before the Collector. Said Section 74 includes an order passed under Section 32-P and as the impugned Order in the Appeal filed before the Sub-Divisional Officer arises out of Section 32-P, the Appeal lies before the Collector in terms of said Section 74.

**6.** The definition of the Collector as defined under Section 2(2-E) of the Tenancy Act, on which Mr. Lad, learned Counsel has heavily relied, reads as under:-

**“2. Definitions.—***In this Act, unless there is anything repugnant in the subject or context,—*

*(2-E) "Collector" includes an Assistant or Deputy Collector performing the duties and exercising the*

*powers of the Collector under the **Bombay Land Revenue Code, 1879**, or **any other officer specially empowered by the State Government to perform the functions of the Collector under this Act;***"

The definition of 'Collector' includes an Assistant or Deputy Collector performing the duties and exercising the powers of the Collector under the *Bombay Land Revenue Code, 1879* or any other officer specially empowered by the State Government to perform the functions of the Collector under the Tenancy Act. Thus, the definition of 'Collector' specifically provides that any other officer specially empowered by the State Government to perform the functions of the Collector under the Tenancy Act can act as a Collector.

**7.** Mr. Rayrikar, learned AGP has relied on the Circular dated 6th June 1951 issued by the Government of Bombay. The relevant part of the said Circular is reproduced herein below for ready reference:-

*"Uptil now all appeals arising out of Section 29 of the Bombay Tenancy and Agricultural Lands Act, 1948, used to be heard and decided by the Collectors as directed in Government Circular, No.10951/45, dated the 21st July 1949, on the ground that **during the earlier states of enforcement appeals under the Tenancy Act should be disposed of at the highest administrative level in the district area as doubts were expressed regarding the Prant Officers' competence to exercise***

*powers of the Collector under the Bombay Tenancy and Agricultural Lands Act, 1948.*

*The Act has been in operation for a period of about two and a half years, and representations have been received to give relief to the Collectors to attend to important work that Prant Officers should be allowed to exercise the powers of the Collector under the Act. The Bombay Tenancy and Agricultural Lands (Amendment) Act, 1951, (Bom.XII of 1951), has come into force from 24th April 1951 under which Prant Officers are competent to exercise all powers of the Collector. In modification of orders contained in Government Circular, Revenue Department, No.10951/45, dated the 21st July, 1949, Government is therefore, pleased to direct that the Prant Officer should also hear and decide applications and appeals under the Act."*

(Emphasis added)

**8.** Thus, it is clear that by exercising powers under the provisions of the Tenancy Act, Circular dated 6th June 1951 has been issued by the Government of Bombay empowering the Sub-Divisional Officer to decide the Appeals which are to be decided by the Collector under Section 74 of the Tenancy Act.

**9.** It is further significant to note that Section 2(34) of the *Maharashtra Land Revenue Code, 1966* ("MLRC") defines 'Sub-Divisional Officer' as an Assistant or Deputy Collector who is placed in charge of one or more sub-divisions of a district. As set out herein above, the term 'Collector' is defined in Section 2(2-E)

of the Tenancy Act as including an Assistant or Deputy Collector.

**10.** It is further significant to note Section 13(4) of the MLRC which reads as under:-

***“13. Powers and duties of revenue officer.—***

***(4) The Sub-Divisional Officer shall subject to the provisions of Chapter XIII perform all the duties and functions and exercise all the powers conferred upon a Collector by this Code or any law for the time being in force, in relation to the sub-division in his charge:***

*Provided that, the Collector may whenever he may deem fit direct any such Sub-Divisional Officer not to perform certain duties or exercise certain powers and may reserve the same to himself or assign them to any Assistant or Deputy Collector subordinate to the Collector:*

*Provided further that, to such Assistant or Deputy Collector who is not placed in charge of a sub-division, the Collector shall, under the general orders of the State Government, assign as such particular duties and powers as he may from time to time deem fit.”*

(Emphasis added)

Thus, the Sub-Divisional Officer is empowered to perform all the duties and functions and exercise all the powers conferred upon a Collector by the MLRC or any law time being in force, subject to Chapter XIII of the MLRC. Chapter XIII of the MLRC is regarding Appeals, Revision and Review. Section 247 of the MLRC is

regarding Appeal and Appellate Authorities and specifies the same in Schedule E. The said Schedule E *inter alia* specifies that the Sub-Divisional Officer is the Appellate Authority for the order passed by all revenue officers in a Sub-Division, subordinate to the Sub-Divisional Officer. There is no dispute that the Tahsildar is subordinate to the Sub-Divisional Officer.

**11.** Thus, the Appeal filed under Section 74 of the Tenancy Act before the Sub-Divisional Officer, Kalyan Division, Kalyan challenging the Order passed by the Tahsildar, Kalyan in the proceedings filed under Section 32-P of the Tenancy Act is within jurisdiction, competent and maintainable.

**12.** Thus, there is no substance in the Petitioners' objection to the jurisdiction of the Sub-Divisional Officer.

**13.** Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

**[MADHAV J. JAMDAR, J.]**