

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

WRIT PETITION NO.8974 OF 2014

Mr. Dnyaneshwar Raghunath Bhoir

Age:-63 years, Occu:-Retired,

Residing at Shahad Gaothan, Plot No.1,

Opp. Century Rayon Co. Ulhasnagar-1

District Thane.

.. Petitioner

Versus

**1. Smt. Bhimabai Rajaram Bhoir,
(Since deceased through her LR's)**

**2. Mr. Prashant Rajaram Bhoir,
Age:-39 years, Occu:-Service,**

**3. Mr. Pravin Rajaram Bhoir,
Age:-36 years, Occu:-Nil,**

**4. Mr. Mahesh Rajaram Bhoir,
Age:-34 years, Occu:-Nil,
All residing at Shahad Gaothan,
Plot No.1, Opp. Century Rayon Co.,
Ulhasnagar-1, District Thane.**

**5. The Collector,
Thane, District Thane.**

6. The Sub Divisional Officer,

Ulhasnagar, District Thane.

.. Respondents

Shri. D. S. Mhaispurkar, for the Petitioner.

Shri. Dnyaneshwar Deshmukh, for the Respondent No.2 to 4.

Shri. S. D. Rayrikar, AGP for the Respondent Nos.5 & 6.

CORAM : R.M. SAVANT, J.

DATE : 27th APRIL, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 20.06.2014 passed by the State Government, by which order the Revision Application filed by the Petitioner came to be rejected and resultantly, the order dated 24.06.2008 passed by the Additional Commissioner, Konkan Division, Mumbai, came to be confirmed.

3. The Petitioner herein aggrieved by the mutation entry No.129 effected in the revenue record in favour of the Respondent Nos.2 to 4 herein who are the heirs of one Smt. Bhimabai Rajaram Bhoir filed an Appeal before the Sub Divisional Officer. It seems that the said mutation entry No.129 was effected in favour of the Respondent Nos.2 to 4 pursuant to the order dated 29.11.1977 passed by the Collector, Thane.

The Sub Divisional Officer dismissed the Appeal on the ground that since the mutation was effected pursuant to an order passed by the Collector, he did not have the jurisdiction to go into the merits of the said order passed by the Collector. The Petitioner aggrieved by the same filed an Appeal before the Additional Commissioner, Konkan Division. The Additional Commissioner confirmed the order passed by the Sub Divisional Officer on the ground that Sub Divisional Officer does not have the jurisdiction to decide the legality and validity of the order passed by the Collector. The Petitioner thereafter filed a Revision Application before the State Government which came to be dismissed by the impugned order dated 20.06.2014 by reiterating that the order passed by the Additional Commissioner confirming the order passed by the Sub Divisional Officer cannot be found fault with.

4. It is required to be noted that in the Appeal filed by the Petitioner before the Additional Commissioner, the Petitioner had also challenged the order passed by the Collector directing to record the name of said Rajaram Bhoir i.e. the husband of the Respondent No.1 herein. However, in prayer clause (c) has not specifically mentioned the date of the order. The Authorities below i.e. Additional Commissioner and the State Government have proceeded on an erroneous premise that their jurisdiction was only to consider whether the order passed by the Sub

Divisional Officer was sustainable or not and that they did not have the jurisdiction to enter into the merits of the order passed by the Collector in the year 1977. The Authorities below have therefore failed to exercise the jurisdiction vested in them i.e. the Appellate Jurisdiction and the Revisionary Jurisdiction in so far as the State Government is concerned. The Additional Commissioner has obviously the Authority to go into the orders passed by the Collector, as he is an officer higher in rank to the Collector. In my view, therefore, the impugned order passed by the State Government dated 20th June, 2014 as also the order passed by the Additional Commissioner dated 24th June, 2008 are required to be quashed and set aside and are accordingly quashed and set aside and matter is relegated back to the Additional Commissioner for a de-novo consideration of the Appeal. The Learned Counsel for the Petitioner states that the Petitioner would amend prayer clause (c) in the said Appeal so as to make a specific reference to the order dated 24.11.1977 passed by the Collector. Leave is accordingly granted to the Petitioner to carry out the said amendment. Needless to state that the contentions of the parties on merits are kept open which would include the point of limitation for being urged before the Additional Commissioner. The Additional Commissioner would undoubtedly have to decide the Appeal as an Appellate Authority and consider the order passed by the Collector dated 29.11.1977 along

with the corrigendum dated 31.03.1989 and dated 04.04.1989. The parties to appear before the Additional Commissioner on 9th June, 2015. The Additional Commissioner to thereafter decide the proceedings expeditiously. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M. SAVANT, J]