

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1082 OF 2007

Sau. Nanda Manoharrao Shirbhate,
Aged about 33 years,
R/o Hiwarkhed, Tq. Morshi,
District Amravati.

.... **PETITIONER**

VERSUS

- 1) Sub-Divisional Officer,
Morshi, Tq. Morshi, District Amravati.
- 2) Rajendra Gulabrao Bhojane,
Aged – Major, R/o Hiwarkhed,
Tq. Morshi, District Amravati.

.... **RESPONDENTS**

None for the petitioner,
Shri K.L. Dharmadhikari, AGP for the respondent No.1,
Shri M.D. Lakhe, Advocate for the respondent No.2.

CORAM : Z.A. HAQ, J.
DATED : 30th JULY, 2015.

ORAL JUDGMENT :

1. Heard Shri K.L. Dharmadhikari, learned Assistant Government Pleader for the respondent No.1 and Shri M.D. Lakhe, learned Advocate for the respondent No.2. None appears for the petitioner.

2. The petitioner has challenged the order passed by the Sub-Divisional Officer, allowing the revision filed by the respondent No.2 under Section 23(2) of the Mamlatdars' Courts Act, 1906.

3. The respondent No.2 had filed an application under Section 5 of the Mamlatdars' Courts Act, 1906, contending that his right of way has been obstructed by the petitioner. The learned Mamlatdar, by the order dated 08-02-2006, dismissed the application filed by the respondent No.2. The respondent No.2 had filed revision under Section 23 of the Mamlatdars' Courts Act, 1906, which came to be dismissed by the Sub-Divisional Officer.

The petitioner being aggrieved by the order passed by the Sub-Divisional Officer, has filed this petition.

4. This Court in the judgment given in the case of ***Bija s/o Maroti Hatwar vs. Kisan s/o Chirkut Padole and another*** reported in ***2015(1) Mh.L.J. 282*** has held that the Sub-Divisional Officer has no jurisdiction to exercise the revisional powers under Section 23(2) of the Mamlatdars' Courts Act, 1906. In view of this, the impugned order is liable to be set aside.

5. Hence, the following order :

- (i) The impugned order passed by the Sub-Divisional Officer is set aside.
- (ii) The revision which was filed by the respondent No.2 under Section 23(2) of the Mamlatdars' Courts Act, 1906 is remitted to the Collector, Amravati for deciding it on merits or transferring it to appropriate authority as per Section 23(2A) of the Mamlatdars' Courts Act, 1906.
- (iii) The respondent No.2 shall appear before the Collector, Amravati on 14-09-2015 at 11 a.m. and abide by the further instructions in the matter.
- (iv) The Collector or the Authority to which the revision is transferred for adjudication, will issue notice to the petitioner. The revision of the respondent No.2 shall be decided after hearing the concerned.
- (v) As the revision application of the respondent No.2 is of 2004-05, the concerned authority shall dispose the revision expeditiously and in any case within three months from the date of appearance of the petitioner.

Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

pma