

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 1693 OF 2013

NARESH BHAGWANDAS NAWAL AND OTHERS
VERSUS
POPAT AVCHIT SONAWANE

...

Advocate for Petitioners : Mr. L.V. Sangeet h/f. Mrs. Minakshi L. Sangeet
Advocate for Respondents: Mr. A.I. Deshmukh.

CORAM : K.K. SONAWANE,J.
DATE : 21st SEPTEMBER, 2016.

PER COURT:

1] Rule. Rule made returnable forthwith. By consent of parties, matter is taken up for final hearing.

2] The petitioner has assailed the order passed by the Tahsildar, Jalgaon and the impugned order passed by the Sub Divisional Officer, Jalgaon under Section 23(2) of the Mamlatdar Courts Act, 1906 in regard to an approach road in between land Gat No. 26/1 and 26/2. It has been alleged that the petitioners are the owners of the land Gat No. 26/1 and the respondent is the owner of the land Gat No.26/2. There was an approach road in existence leading from village Nandre (Khurd) to Chandsar, in East-West direction passing through land Gat No. 26/1 and 26/2. It has been alleged that the petitioners created obstruction in the road. Aggrieved thereby, the respondent approached the Tahsildar by filing a proceeding for removal of obstruction created by the petitioners. The learned Tahsildar, after appreciating the factual aspect, allowed the application and bade

petitioners to remove the obstruction created on the road. Being dissatisfied with the order of the learned Tahsildar, petitioners filed a revision petition before the Sub Divisional Officer, Jalgaon under section 23(2) of the Mamlatdar's Courts Act 1906 (hereinafter referred to as, "the Act of 1906"). The learned SDO verified the circumstances and found reluctant to nod in favour of petitioners. The learned SDO dismissed the revision petition and passed the impugned order, which is assailed in the instant petition.

2] Heard learned counsel for the petitioners and respondent.

3] Admittedly, the respondent initiated the proceeding before the learned Tahsildar for removing obstruction created in the way leading from Nandre (Khurd) to Chandsar in East-West direction, from Gat No. 26/1 to 26/2. The learned Tahsildar carried out the enquiry and after scrutiny of relevant record as well as factual scenario, arrived at the conclusion that there is a road from Gat No. 26/1 to 26/2 leading up to Girna river. Therefore, learned Tahsildar, by exercising powers under Section 5 and 19(2) (4) of the Act of 1906, passed an order directing the petitioners to keep open the road as per the village map.

4] Being aggrieved by the impugned order, the petitioners filed a revision under Section 23(2) of the Act of 1906 before the Sub-Divisional Officer, Jalgaon. The learned SDO, Jalgaon, considered the proceedings on merits and confirmed the order passed by the learned Tahsildar and

dismissed the revision filed by the petitioners. The learned SDO dealt with the proceedings on merits by exercising powers under Section 23(2) of the Act of 1906. However, in view of the provisions contemplated under Section 23(2) of the Act of 1906, the powers of Collector conferred upon him under Section 23(2) of the Act of 1906 can be delegated only to the Assistant Collector, Deputy Collector or the Assistant Commissioner and not to any other Revenue Officer subordinate to him. In the present proceedings, it appears that the SDO, Jalgaon ventured to exercise the revisional powers contemplated under Section 23(2) of the Act of 1906.

6] The learned Single Judge of this Court at Nagpur, in W.P. No. 5777 of 2015 in the matter of ***Ambadas Rajaram Pawar vs. Rameshwar Rajaram More and others***, has categorically held that the SDO is not empowered to deal with the proceeding for exercise of powers under Section 23 of the Act of 1906. In the matter of ***Bija Maroti Hatwar Vs. Kisan Chirkut Padole and another reported in 2015(1) Mh.L.J. 282***, it has been delineated that the SDO has no jurisdiction to decide the application under Section 23(2) of the Act of 1906..

7] Considering the settled legal position mentioned above, there would be no propriety to go into the merits of the petition. Apparently, the impugned order passed by the SDO is without jurisdiction. Therefore, the same deserves to be quashed and set aside.

8] In view of the aforesaid discussion, the impugned order dated 21.11.2012 passed by the Sub Divisional Officer, Jalgaon is quashed and set

aside on the ground that the SDO has no jurisdiction to entertain the proceeding. If the petitioners are aggrieved by the order of the learned Tahsildar, it is open for the petitioners to challenge the said order by filing appropriate revision petition before the Collector, Jalgaon for exercise of powers under Section 23(2) of the Mamlatdars Courts Act, 1906. In case petitioners file such revision petition, there would not be any question of limitation for consideration in the proceeding before the Collector. Needless to state that this Court has not examined the merits of the matter and the impugned order is quashed and set aside on the ground of lack of jurisdiction to entertain the proceeding by the learned SDO. Respective contentions of both the parties are kept open. The Collector shall decide the revision petition, if any, filed by the petitioner, as expeditiously as possible, preferably within six months from the date of filing, on its own merit. Accordingly, writ petition stands disposed of in above terms. There shall be no orders as to costs.

9] Learned counsel for the petitioners submit that there is a status-quo order in operation since 28.2.2013, the same may be continued for a period of 8 weeks to facilitate the petitioner to approach to the Collector by filing appropriate revision petition. Status-quo order to continue for a period of 8 weeks from today.

**[K.K. SONAWANE]
JUDGE.**

grt/-