

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6840 OF 2013

Shankar Vishnu Jadhav
Age: 45 years, Occu.: Agriculture,
r/o Adhalgaon, Tq. Shrigonda,
Dist. Ahmednagar.

..PETITIONER

VERSUS

1. The Sub-Divisional Officer,
Karjat Sub-Division, Karjat,
Tq. Karjat, Dist. Ahmednagar.
2. The Tahsildar, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.
3. Smt. Saraswati Dada Raikar,
Age: 44 years, Occu.: Agriculture,
4. Sau. Meenabai Babu Raikar,
Age: 36 years, Occu.: Agriculture,
5. Sau. Sangeeta Mohan Raikar,
Age: 35 years, Occu.: Agriculture,
6. Mohan Bhau Raikar,
Age: 48 years, Occu.: Agriculture,
All R/o Adhalgaon, Tq. Shrigonda,
Dist. Ahmednagar.

Respondent Nos.3 to 6 all represented through
Special Power of Attorney Holder
Shri. Dadaram Bhausahab Raikar
Age: 55 years, Occu.: Agriculture,
R/o Adhalgaon, Tq. Shrigonda,
Dist. Ahmednagar.

..RESPONDENTS

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Mr. Umakant Wagh, Advocate h/f Mr. A.V. Hon, Advocate for petitioner.
Mr. P.G. Borade, AGP for Respondent Nos.1 and 2.
Mr. J.S. Gavane, Advocate for Respondent Nos.3 to 6.
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CORAM : RAVINDRA V. GHUGE, J.
DATED : 16th MARCH, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the order passed by the Sub-Divisional Officer, Sub-Division Karjat dated 08.04.2013 by which Revision Application No. 85/2008 preferred by Respondent Nos.3 to 6 was entertained under Section 23(2) of the Mamlatdars Courts Act, 1906.
3. The learned Counsel for the petitioner points out from Section 23 of the Act that first of all there is bar on an appeal against the order passed by the Mamlatdar under this Act. Secondly, it is only the Collector who can exercise revisional jurisdiction under Section 23(2) of the Act. The Collector may delegate the powers to the Assistant Collector, Deputy Collector or Assistant Commissioner. The grievance is that the sub-divisional officer has exercised jurisdiction over the matter not vested in him by law.

4. Mr. Gavane, learned Counsel appearing on behalf of Respondent Nos.3 to 6 strenuously supports the impugned order and submits that there is no perversity in the same.

5. The learned AGP appearing on behalf of Respondent Nos.1 and 2 submits that in several matters, this Court has remitted such proceedings to the Collector under Section 23(2) of the Act as the subdivisional officer does not have the jurisdiction.

6. I have considered the submissions of the learned Counsels.

7. Section 23 of the Mamlatdars' Courts Act, 1906 reads as under:-

“23. (1) There shall be no appeal from any order passed by a Mamlatdar under this Act.

(2) But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.

[(2A) The Collector may delegate the powers conferred on him by this section to any [Assistant Collector, Deputy Collector or Assistant Commissioner] subordinate to him];

(3) *Where the Collector, [Assistant Collector, Deputy Collector or Assistant Commissioner] takes any proceedings under this Act he shall be deemed to be a Court, under this Act.”*

8. There is no dispute that the Sub-Divisional Officer is neither an Assistant Collector nor a Deputy Collector or Assistant Commissioner as understood under Section 23(2A) of the Act.

9. In the light of the above, it is apparent that Respondent No.1 could not have exercised jurisdiction under Section 23(2) or even under Section 23(2A) of the Act.

10. This petition is therefore allowed.

11. The impugned order dated 08.04.2013 is quashed and set aside. Revision Application No. 85/2008 is remitted to the Office of the District Collector, Ahmednagar for decision on its merits. Until then, the order of the Tahasildar dated 21.11.2008 shall continue to operate.

12. The litigating sides who are before the Court shall appear before the District Collector, Ahmednagar on 11.04.2016 at 11.00 a.m.

and shall thereafter participate in the proceedings on the dates on which the District Collector posts the matter for hearing. It is expected that the District Collector shall decide the matter as expeditiously as possible and preferably on or before 30.07.2016.

13. Rule is made absolute in the above terms.

14. Record and Proceedings received from the Office of Respondent No.2-Tahsildar, Shrigonda shall be returned back forthwith.

(RAVINDRA V. GHUGE, J.)