

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

WRIT PETITION NO. 8368 OF 2012

Jaimin Ramji Maheshwari,
Age : 42 years, occupation : Business,
R/o :Ranjankhol, taluka Rahata,
District Ahmednagar

...PETITIONER
(Original opponent)

versus

1. Laxman Damodhar Kulthe,
Age: Major,
R/o Ranjankhol, taluka Rahata,
District Ahmednagar.
2. Ramnath Ramji Dhokechawale,
Age Major,
Resident of Ranjankhol, Taluka Rahata,
District Ahmednagar.
3. Vinod Roshanlal Bhalla,
Age major,
Resident of Ward No. 1 at Shrirampur,
District : Ahmednagar.

...RESPONDENTS
(Original opponent)

.....
Mr. Sanket S. Kulkarni, Advocate for petitioner
Mr. Abhijit B. Kale, Advocate for respondent No. 1
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CORAM : K.K. SONAWANE, J.

DATED : 20th SEPTEMBER, 2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the petitioner. When the matter is called out, neither respondent No. 1 nor his counsel were present.

2. The petitioner assails order dated 31-08-2012 in Revision Application No. 34 of 2012 passed by the learned Sub-Divisional

Officer, Shrirampur thereby refusing to cause interference in the order dated 2/3-05-2012 in Rasta Case No. 08 of 2012 passed by the tahsildar, Rahata in regard to the road abutting to land Gut No. 114 for ingress and egress to present petitioner.

3. According to the petitioner, Sub-Divisional Officer, Shrirampur has no power to deal with revision petition under section 23 of the Mamaltdar's Courts Act, 1906. The Collector cannot delegate the powers to sub-ordinate officer, other than Assistant Collector, Deputy Collector or Assistant Commissioner. Learned counsel for the petitioner relying on the decisions of learned Single Judge of this court bench at Nagpur in *writ petition No. 5777 of 2015 (Ambadas Rajaram Pawar and another Vs. Rameshwar Rajaram More and others)*, *Writ petition No. 757 of 2016 (Bachhulal @ Narayandas S/o Rambilas and another Vs. Mohan Bhagwantrao Thakare and others)* and *writ petition no. 4609 of 2015 (Narayan Bhagwan Bholankar and others Vs. Dattatraya Digambar Tayade and others)* contends that the order dated 31-08-2012 in revision application no. 34 of 2012 passed by the Sub-Divisional Officer, Shrirampur deserves to be quashed and set aside.

4. I have given anxious consideration to the submissions advanced on behalf of learned counsel for the petitioner. Present writ petition challenges validity and legality of the impugned order dated 31-08-2012 in Revision Application no. 34 of 2012 passed by the Sub-Divisional Officer, Shrirampur. It is settled law that there is no remedy available against order passed by the Tahsildar, except

revision before the Collector. Section 23(2A) of the Mamlatdar's Court Act, 1906 provides delegation of powers of the Collector and the delegation can be to Assistant Collector, Deputy Collector or Assistant Commissioner subordinate to the Collector. In the instant case, learned Sub-Divisional Officer, Shrirampur entertained the matter by exercising powers under section 23(2) of the Mamlatdar's Courts Act, 1906. The learned Single Judge of this Court bench at Nagpur in the case of *Bija Maroti Hatwar Vs. Kishan Chirkut Padole and another* reported in 2015(1) Mh.L.J.,282 has categorically delineated that revisional powers under section 23(2) of the Mamlatdar's Courts Act, 1906 are required to be exercised by the Collector and the Sub-Divisional Officer cannot exercise the revisional powers. In such circumstances, impugned order appears to be illegal and unsustainable one in the eye of law.

5. In such peculiar circumstances, I do not find any impediment to allow the petition. The impugned order dated 31-08-2012 in Revision Application No. 34 of 2012 passed by the Sub-Divisional Officer, Shrirampur is hereby quashed and set aside and the matter is relegated back to the Collector Ahmednagar for decision in the matter afresh. The Collector has to adjudicate the issue on its own merits by exercising the powers under section 23 of the Mamlatdar's Courts Act, 1906, after giving an opportunity of hearing to both parties. The Collector shall take endeavour for decision of revision application, as expeditiously as possible, preferably within a period

of six months from the date receipt of writ of this order.

6. It has been submitted on behalf of the petitioner that interim relief by way of *status-quo* has been already continued in the present petition since 5th November, 2015 and same be continued till decision of the proceedings pending before the Collector.

7. In view of the nature of subject-matter, parties shall maintain *status-quo* as was operating during pendency of the writ petition till decision of the Revision Application by the the learned Collector, Ahmednagar.

8. Writ petition is allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

Sd/-

[K. K. SONAWANE, J.]

MTK