

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

WRIT PETITION NO. 224 OF 2016

Geetabai Vithoba Dukare and anr.

...Petitioners

vs.

Vishnu Baban Wakchaure and ors.

...Respondents

Mr. P. B. Deo a/w Ms. Priya P. Deo, Advocate for the petitioners.
Mr. Rameshwar N. Gite, Advocate for respondent no.1.
Ms. V. S. Nimbalkar, Additional Government Pleader for
respondents no.2 to 5.

Coram : Smt. R. P. SondurBaldota, J.

Date : 28th June, 2016

P.C. :

1. This petition challenges the order dated 30th September, 2015 passed by the Minister of Revenue, Maharashtra State in Appeal No. 3014/Proceedings No.312/J-6. The proceedings before the Minister arose out of the order dated 7th May, 2015 passed in RTS Revision No.136 of 2012 filed by the petitioner before the Divisional Commissioner, Nashik. By that order, the Divisional Commissioner set aside the order dated 18th November, 2011 of the Sub-divisional Officer for removal of encroachment by the petitioner and the order dated 19th December, 2011 of the Appellate Authority in the appeal preferred against that order.

2. The ground of challenge taken by the petitioner is contravention of Section 138 (4) and (5) of the Maharashtra Land Revenue Code, 1966. After the order passed by Sub-divisional Officer on 18th November, 2011, the petitioner within one year thereafter i.e. on 25th February, 2012 filed a civil suit for declaration of his right to the property over which he has been declared an encroacher and for further reliefs. That suit has been pending for consideration. Sub-section (5) of Section 138 provides that where a civil suit has been instituted under sub-section (4) against any order of ejectment, such order shall not be subject to appeal or revision. This would mean that once Civil Court is seized of the matter, the parties are not expected to resort to the remedies available before Revenue officers. The reliance placed by the petitioner on Section 138 (4) and (5) is justified. However, for the same reason the revision preferred by the petitioner being RTS Revision No.136 of 2012 was not maintainable. As such the impugned order, which sets aside the order of RTS Revision No. 136 of 2012 needs to be confirmed. The petition is therefore dismissed.

[Smt. R. P. SondurBaldota, J.]