

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 135 OF 2013

(SAU. NANDA YOGAJI GAWALI & ORS...VS..SANTOSH DATTATRAYA JADHAV & ORS.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : JANUARY 18, 2016.

Considering the nature of controversy, the applicants are granted oral leave to implead the Collector, Yavatmal as Non-applicant No.4.

Shri B.M. Lonare, A.G.P. waives notice for the non-applicant No.4-Collector, Yavatmal.

None appeared for the non-applicants in morning session. The matter was kept back. Again in the afternoon session none appears for the non-applicant Nos. 1, 2 and 3(a) to 3(d).

Heard Shri V.T. Lalwani, advocate holding for Shri R.L. Khapre, advocate for the applicants.

The applicants have challenged the order passed by the Sub-Divisional Officer allowing the revision filed by the respondents under Section 23 of the Mamalatdars' Courts Act, 1906. The non-applicant Nos. 1 and 2 and the predecessor of the non-applicant Nos. 3(a) to 3(d) filed proceedings under Section 5 of the Mahalatdars' Courts Act, 1906 which were dismissed by the Naib Tahsildar by the order dated 26th

November, 2012. This order was challenged by the non-applicant Nos. 1, 2 and predecessor of the non-applicant No.3(a) to 3(d) in revision before the Sub-Divisional Officer. The revision is allowed. The applicants being aggrieved by the order passed by the Sub-Divisional Officer have filed this Civil Revision Application.

In the judgment given in the case of *Bija Vs. Kisan*, reported in **2015(1) Mh.L.J. 282** this Court has held that the Sub-Divisional Officer has no jurisdiction to entertain and decide the revision application under Section 23 of the Mamalatdars' Courts Act, 1906.

In view of the law laid down by this Court in the above referred judgment, the order passed by the Sub-Divisional Officer has to be set aside.

Hence, the following order :

- i) The order passed by the Sub-Divisional Officer in Revenue Case No.2/MCA-5/2012-13 on 31st July, 2013 is set aside.
- ii) The revision application filed by the non-applicant No.1, 2 and predecessor of non-applicant Nos. 3(a) to 3(d) is restored and remitted to the Collector, Yavatmal for deciding it on merits.
- iii) The Collector, Yavatmal may decide the revision application himself or make it over to any officer competent to decide the revision as per Section 23(2A) of the Mamalatdars' Courts Act, 1906.

- iv) The Collector, Yavatmal or the officer to whom the revision may be made over for decision shall decide the revision after hearing the concerned parties till 6th May, 2016.
- v) The applicants shall serve the copy of this order on the Collector, Yavatmal within two weeks.
- vi) The learned A.G.P. shall also send copy of this order to the Collector, Yavatmal.

The revision application is allowed in the above terms. In the circumstances, the parties to bear their own costs.

Authenticated copy be provided to the parties.

JUDGE

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