

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

WRIT PETITION NO. 10441 OF 2017

DATTATRAYA SITARAM KASAR AND OTHERS
VERSUS
THE SUB DIVISIONAL OFFICER, AHMEDNAGAR AND OTHERS

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Advocate for Petitioners : Shri Sanjay N. Gaikwad h/f Shri Gaware N.V.
AGP for Respondents/ State : Shri S.K.Tambe.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th August, 2017

Per Court:

1 The Petitioners are aggrieved by the order dated 18.04.2017 by which the Sub Divisional Officer, Ahmednagar has directed the removal of all encroachments in the Walumba river bed and has directed action to be initiated as per the orders of the Tahasildar in the earlier Rasta Case No.5/2013.

2 Learned Advocate for the Petitioners initially criticized the impugned order. When this Court expressed a view that the impugned order is in tune with the scheme of law, he canvassed an argument that RTS Revision No.121/2016 was not maintainable before the Sub Divisional Officer under Section 23(2) of the Mamlatdars' Courts Act, 1906 since the order passed by the Tahasildar was under Section 5(2) of

the said Act.

3 It appears that these Petitioners themselves had approached the Sub Divisional Officer by filing RTS Revision No.121/2016. After having suffered an order, the Petitioners have argued before this Court that the impugned order is unsustainable on merits. When a view was expressed that the directions of the Sub Divisional Officer would result in removal of all encroachments, then, the Petitioners argued that the Sub Divisional Officer did not have jurisdiction to entertain the revision in the light of the view taken by this Court in the matter of Shankar Vishnu Jadhav vs. The Sub Divisional Officer, Karjat and others, Writ Petition No.6840/2013 (Aurangabad Bench) decided on 16.03.2016.

4 It requires no debate that this Court has held in the above cited judgment that the Sub Divisional Officer would not have jurisdiction to entertain a revision against an order passed by the Tahasildar under the Mamlatdars' Courts Act, 1906. It, however, cannot be ignored that it were these very Petitioners who had approached the Sub Divisional Officer and had invoked his jurisdiction though this Court had also held, in Bija Maroti Hatwar vs. Kisan Chirkut Padole and another, 2015 (1) Mh.L.J. 282 : 2015 (7) Bom. C.R. 601, that the Sub Divisional Officer does not have jurisdiction.

5 Considering the above, this Writ Petition is partly allowed and

the impugned order dated 18.04.2017 is set aside only because the Sub Divisional Officer would not have jurisdiction to entertain the said revision under Section 23(2).

6 However, for the conduct of the Petitioners as is recorded above, these eight Petitioners shall deposit a total costs of Rs.4,000/- (Rupees Four Thousand). The learned AGP submits that the said amount can be donated to the Advocates Association's Bar Library, High Court, Aurangabad. As such, the Petitioners shall deposit the said costs with the Advocate Association's Bar Library, High Court, Aurangabad within THREE WEEKS from today and while preferring a revision petition under Section 23(2) before the Additional Collector, they shall produce a receipt of the cost deposited, failing which the Additional Collector shall not entertain the said revision petition.

kps

(RAVINDRA V. GHUGE, J.)