

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

WRIT PETITION NO. 2466 OF 2017

- 1 Vijay s/o Prabhakar Dhake
 age 47 years, occ. Agril
 r/o Kolhadi, Tq. Bodwad
 Dist. Jalgaon
- 2 Prabhakar s/o Zhama Dhake
 age 80 years, occ. Agril
 r/o as above.

.. PETITIONERS

VERSUS

- 1 The State of Maharashtra
 Through Sub-Divisional Officer
 Bhusawal, Dist. Jalgaon
- 2 The Tahsildar / Mamlatdar
 Tahsil Office, Bodwad, Tq. Bodwad
 Dist. Jalgaon
- 3 Bhaskar s/o Zama Dhake
 age 70 years, occ. Agril
 r/o Kolhadi, Tq. Bodwad
 Dist. Jalgaon.

.. RESPONDENTS

Mr. K.B. Jadhav, advocate holding for Mr. G.B. Kulkarni, advocate for petitioners.

Mr. A.V. Deshmukh, AGP for respondents no. 1 and 2.

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CORAM : S. B. SHUKRE, J.

DATE : 2nd MARCH, 2017.

ORAL JUDGMENT :

1. Heard learned counsel for petitioners and learned AGP for respondents no. 1 and 2. There is no need to issue notice to respondent no.

3.

2. Rule. Rule made returnable forthwith.

3. Heard finally by consent of learned counsel for the respective parties.

4. It is submitted by learned counsel for petitioners that the Sub-Divisional Officer has no authority to deal with the application under section 23(2) of the Mamlatdars' Courts Act, 1906 for which, he relies upon the case of Ramesh Damu Patil Vs. Purushottam Imrao Chavan & Ors., **2017(1) Mh.L.J. 818.**

5. Learned AGP points out that petitioners themselves had invoked revisional jurisdiction of the Sub-Divisional Officer under section 23(2) of the Act and, now, they have come before this Court only when they realised that revisional application was dismissed by the learned Sub-Divisional Officer.

6. So far as the law laid down in the case of Ramesh (supra) is concerned, there can be no second opinion. Section 23(2) of the Act is also very clear. It has conferred revisional powers upon the Collector and sub-section 2(a) enables the Collector to delegate these powers to Assistant Collector, Deputy Collector or Assistant Commissioner and, officer of the designation Sub-Divisional Officer does not fall in any of those categories of the officers. Therefore, revisional application under section 23(2) of the Act ought not to have been filed by the petitioners before the Sub-Divisional Officer. Now, petitioners having realised that the learned Sub-Divisional Officer has rejected the application, are disputing the jurisdiction of the

learned Sub-Divisional Officer on the specious ground that he has no authority in law to decide the revision application. However, this was known to the petitioners, in the first place itself. Petitioners ought not to have invoked revisional powers before the learned Sub-Divisional officer and ought to have approached the Collector or any authorised officer under section 23(2)(A) of the Act. Since they did not do so, rather, chose to try and test the revisional powers of the Sub-Divisional Officer, now it would not lie in their mouth to say that the learned Sub-Divisional Officer has gone wrong in rejecting the revisional application. Therefore, the only remedy that petitioners would have, if any, would be to approach the appropriate authority under section 23(2) or 2(a) of the Act and, not this Court under Articles 226 or 227 of the Constitution of India. If this petition is considered here, it would amount to giving advantage to petitioners for their own wrong deeds. There is no merit in this petition. Petition stands dismissed with cost. Liberty to petitioners to approach appropriate authority, subject to law of limitation. Rule discharged.

(S. B. SHUKRE)
JUDGE