

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3702 OF 2016

Siddivinayak Devalaya Trust Turambe. ..Petitioner.
vs.
The Addl.Collector, Kolhapur & ors. ..Respondents.

Mr. Prashant Bhavke for the petitioner.
Mr. S.D. Rayrikar, AGP. for the State.
Mr.Tanaji Mhatugade for Respondent Nos.3 to 23.

CORAM: A.S.GADKARI, J.
DATE : 22nd August, 2017

P.C.

1. The jurisdiction of this Court under Article 227 of the Constitution of India is invoked by the petitioner impugning the order dated 14.9.2015 passed by the Additional Collector, Kolhapur in Revision No.157/2015.

2. The record reveals that respondent Nos. 2 to 22 filed an application bearing RTS No.6/2014 under Section 5 of the Mamlatdars' Courts Act. The Tahsildar by its order dated 23.2.2014 directed the petitioner to open the easementary right of way mentioned in the said order. Feeling aggrieved by the said decision of the Tahsildar the petitioner preferred Revision Application No.157 of 2015 before the Additional Collector, Kolhapur i.e. Respondent No.1 herein. Respondent No.1 by the impugned order has held that it is the Sub

Divisional Officer, Radhanagari before whom revision would lie at the first instance and respondent No. 1 has no jurisdiction to entertain and hear the said revision application. In the case of Bija s/o. Maroti Hatwar vs. Kisan s/o. Chirkut Padole and anr. Reported in 2015(1) Mh.L.J. Page 282 while analyzing the provisions of Section 23(2A) of the Mamlatdars' Courts Act and Maharashtra Land Revenue Code, 1966 this Court has held that Sub Divisional Officer has no jurisdiction to entertain and decide the revision application preferred against the order of Mamlatdar/Tahsildar and it is the Collector who has jurisdiction to try and entertain the same. It is further held that the Collector may delegate powers conferred on him to Dy. Collector or Addl. Collector subordinate to him. However, the said delegation cannot be in favour of the Sub Divisional Officer. In view of the ratio laid down by this Court in the Case of Bija Hatwar (supra) the conclusion recorded by the Additional Collector, Kolhapur is dehors of any merits and deserves to be quashed and set aside. Accordingly the petitioner succeeds.

Hence, the order.

- a) The order dated 14.9.2015 passed by respondent No.1 is hereby quashed and set aside and the said Revision No.157/2015 is restored to the file of respondent No.1.
- b) Respondent No.1 is hereby directed to hear the

said revision as expeditiously as possible and in any case within a period of six months from the date of receipt of this order.

c) Interim relief granted by an order dated 9/8/2017 shall remain in force for a period of 8-weeks from today.

d) Petition is allowed in the aforesaid terms.

All the concerned to act on a copy of this order duly authenticated by the registry of this Court.

(A.S.GADKARI, J.)