

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11598 OF 2014

1. Shri Vilas Gajanan Bhujbal)
 2. Shri Nandkumar Gajanan Bhujbal)
 3. Shri Ratnakar Gajanan Bhujbal)
 4. Smt.Vijayalaxmi Umesh Bhujbal)
 5. V.G.Bhujbal)
 6. Smt.Suvarna Umesh Bankar)
 7. Smt.Aparna Umesh Bankar)
All Adults, residing at Yavat Station,)
Taluka Daund, Dist. Pune)
- Petitioners**

VERSUS

1. Sou.Pushpa Chandrakant Dabhade)
 2. Smt.Shakuntala Nandkumar Dabhade)
 3. Sou.Anjana Kaluram Dabhade)
 4. Shri Tanaji Gulabrao Dabhade)
All Adults, residing at Yavat Station,)
Taluka Daund, Dist. Pune)
 5. Sub Divisional Officer,)
Daund-Purandar Sub Division,)
Purandar (Saswad), Dist. Pune)
- Respondents**

Mr.Prafulla B.Shah, i/b. Mr.Kayval P.Shah for the Petitioners.

Mr.Sachin S.Punde for the Respondent nos. 1 to 4.

Mr.S.D.Rayrikar, A.G.P. for the State - Respondent no. 5.

CORAM : R.D.DHANUKA, J.

DATE : 11th DECEMBER, 2017

JUDGMENT

Rule returnable forthwith. Learned counsel appearing for the respondents waive service. By consent of parties, the matter is heard finally.

2. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have impugned the order dated 3rd March, 2014 passed by the Sub Divisional Officer, Daund-Purandar Sub-Division, Purandar (Saswad) in Revision Application No.29 of 2013 thereby setting aside the order passed by the Tahsildar on the ground that the Sub Divisional Officer had no power to decide the revision application in view of the provisions under section 23(2A) of the Mamlatdar's Courts Act, 1906 (for short the said Act) and also on the ground that the Collector had no power to delegate the powers conferred on him under section 23 to the Sub-Divisional Officer.

3. It is not in dispute that the impugned order is passed by the Sub-Divisional Officer under section 23 (2A) of the Mamlatdar's Courts Act, 1906. Section 23 of the Mamlatdar's Courts Act, 1906 reads thus :-

23. (1) There shall be no appeal from any order passed by a Mamlatdar under this Act.

(2) But the Collector may call for and examine the

record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.

[(2A) The Collector may delegate the powers conferred on him by this section to any [Assistant Collector, Deputy Collector or Assistant Commissioner] subordinate to him];

(3) Where the Collector, [Assistant Collector, Deputy Collector or Assistant Commissioner] takes any proceedings under this Act he shall be deemed to be a Court under this Act.

4. Mr.Shah, learned counsel appearing for the petitioners invited my attention to section 23(2A) of the Mamlatdar's Courts Act, 1906 and would submit that under section 23(2A), the collector though has power to delegate the powers conferred on him under that provision, the collector can delegate such powers only upon Assistant Collector, Deputy Collector or Assistant Commissioner who are subordinate to him. He submits that the sub-divisional officer is not one of the officer described under section 23(2A) to exercise the powers of the collector under section 23(2) who can be delegated such powers. In support of this submission, learned counsel placed reliance on the judgment of this court (i) in case of ***Bija s/o.Maroti Hatwar vs. Kisan s/o.Chirkut Padole & Anr., 2015(1) MAH.L.J.282*** and in particular paragraphs 4 to 9, (ii) in case of ***Ramesh Damu Patil vs.Purushottam Umrao Chavan & Ors., 2017(1) MAH.L.J.818*** (paragraphs 8 to 13), (iii) an unreported judgment of this Court Bench at Nagpur in case of ***Narayan Bhagwan Bholankar & Ors. vs.Dattatraya Digambar Tayade in Writ Petition***

No.4609 of 2015 delivered on 28th April, 2016 (paragraphs 5 to 9) and (iv) an unreported judgment of this Court, Bench at Nagpur in case of **Bachhulal @ Narayandas s/o.Rambilas Rathi & Another vs. Mohan Bhagwatrao Thakare & Ors. in Writ Petition No.757 of 2016** on 8th July, 2016 (paragraphs 3 and 4).

5. Learned A.G.P. placed reliance on the communication dated 1st August, 1996 issued by the Office of the Collector, District Magistrates, Pune i.e. an order purportedly passed under section 23(2A) of the Mamlatdar's Courts Act, 1906 thereby delegating the powers under section 23(2) of the Mamlatdar's Courts Act, 1906 to the Assistant Collectors and Sub Divisional Officer in the District Pune. He submits that in view of the specific powers having been delegated by the Collector upon the Sub-Divisional Officer, the impugned order passed by the Sub-Divisional Officer is thus not without jurisdiction.

6. Learned counsel for the respondent nos. 2 to 4 on the other hand made an attempt to distinguish the judgments relied upon by the learned counsel for the petitioners by placing reliance on the definition of Sub-Divisional Officer under section 2(34) of the Maharashtra Land Revenue Code, 1966 which reads thus :-

“Sub-Divisional Officer” means an Assistant or Deputy Collector who is placed in charge of one or more sub-divisions of a district.

7. It is submitted that the definition of Sub-Divisional Officer was not brought to the notice of this court in the aforesaid judgments relied

upon by Mr.Shah, learned counsel for the petitioners. He submits that the said definition has to be read with the powers of the collector described in section 23(2A) of the Mamlatdar's Courts Act, 1906. He submits that none of the judgments thus relied upon by the learned counsel for the petitioners would assist the case of the petitioners and are distinguishable.

8. Mr.Shah, learned counsel for the petitioners invited my attention to the judgment of this Court in case of ***Bija s/o.Maroti Hatwar*** (supra) and would submit that this court in the said judgment had considered section 13(4) of the Maharashtra Land Revenue Code, 1966 which was pressed in motion by the learned A.G.P. before this Court to canvass that the Sub-Divisional Officer could perform all powers of the Collector. He submits that this Court has specifically negated the said contention raised by the State Government in the said judgment.

9. A perusal of section 23 of the Mamlatdar's Courts Act, 1906 clearly indicates that the collector has been empowered to exercise revisionary powers in certain circumstances in the Mamlatdar's proceedings. Under section 23(2A), the Collector is empowered to delegate such powers to any Assistant Collector, Deputy Collector or Assistant Commissioner subordinate to him. A perusal of the Mamlatdar's Courts Act, 1906 and more particularly section 3 clearly indicates that the Sub-Divisional Officer is not defined under the provisions of the Mamlatdar's Courts Act, 1906. Section 3(aa) defines Collector which includes a Deputy Commissioner.

10. This Court in case of ***Bija s/o.Maroti Hatwar*** (supra) has considered the submission made by the State Government which has pressed in motion section 13(4) of the Maharashtra Land Revenue Code and rejected the contention that while exercising jurisdiction under section 23(2) of the Mamlatdar's Courts Act, 1906, the Sub-Divisional Officer is exercising powers conferred on the Collector by the Maharashtra Land Revenue Code. It is further held that section 13(4) of the Maharashtra Land Revenue Code shows that the Sub-Divisional Officer may subject to the provisions of Chapter XIII of the Maharashtra Land Revenue Code, perform all the duties and functions and exercise all the powers conferred upon the Collector by the Maharashtra Land Revenue Code or any law for the time being in force in respect of sub-divisions in his charge. This Court held that the reading of section 23(2A) of the Mamlatdar's Courts Act, 1906 makes it clear that this provision does not authorize the Sub-Divisional Officer to exercise the powers conferred upon the Collector. It is not in dispute that the impugned order is passed by the Sub-Divisional Officer by exercising alleged powers under section 23(2A) alleged to have been delegated by the collector.

11. In my view in these circumstances, the definition of Sub-Divisional Officer under section 2(34) of the Maharashtra Land Revenue Code, 1966 relied upon by the learned counsel for the respondent nos. 1 to 4 would not advance the case of his clients. The definition of the Sub-Divisional Officer under the Maharashtra Land Revenue Code, 1966 has to be read with his powers prescribed in section 13(4) of the Maharashtra Land Revenue Code, 1966 and cannot

be read in section 23(2A) of the Mamlatdar's Courts Act, 1906. This Court has already interpreted the provisions of section 13(4) of the Maharashtra Land Revenue Code, 1966 in the said judgment in case of ***Bija s/o.Maroti Hatwar*** (supra) and has rejected the contention of the State Government that the Sub Divisional Officer could exercise power of the Collector under Mamlatdar's Courts Act, 1906. In my view the judgment of this court in case of ***Bija s/o.Maroti Hatwar*** (supra) applies to the facts of this case. I am respectfully bound by the said judgment. There is thus no merit in the submission of the learned counsel for the respondent nos. 1 to 4 that the said judgment of this Court cannot be considered as a precedent in view of this court not having considered the definition of the Sub- Divisional Officer defined under section 2(34) of the Maharashtra Land Revenue Code, 1966.

12. The judgment of this court in case of ***Bija s/o.Maroti Hatwar*** (supra) has been subsequently followed by this Court in case of ***Narayan Bhagwan Bholankar & Ors.*** (supra), in case of ***Ramesh Damu Patil*** (supra) and in case of ***Bachhulal @ Narayandas s/o.Rambilas Rathi & Another*** (supra). In my view, the aforesaid three judgments also squarely apply to the facts of this case. I am respectfully bound by the said judgments.

13. Insofar as the reliance placed by the learned A.G.P. on the order dated 1st August,1996 issued by the Collector purportedly exercising the powers under section 23(2A) of the Mamlatdar's Courts Act, 1906, delegating powers on Assistant Collector and Sub-Divisional Officer is concerned, in my view a perusal of section 23(2A) indicates that though

the Collector is empowered to delegate the powers upon the Assistant Collector, no such power is granted to the Collector to delegate his powers to Sub-Divisional Officer. The said order passed by the Collector is *ex-facie* contrary to section 23(2A). The said order thus would be of no assistance to the State Government or to the respondent nos. 1 to 4 being passed beyond his powers under section 23(2A).

14. For the reasons recorded aforesaid, in my view the impugned order of the Sub-Divisional Officer passed on 3rd March, 2014 is without jurisdiction and thus deserves to be set aside. I, therefore, pass following order :-

- (a) Impugned order dated 3rd March, 2014 passed by the Sub-Divisional Officer is set aside. The Revision Application No.29 of 2013 is restored to file. The learned Collector shall decide the said revision application himself or the same can be decided by one of the Officer subordinate to him described in section 23(2A) of the Mamlatdar's Courts Act, 1906 expeditiously.
- (b) Rule is made absolute in the aforesaid terms.
- (c) There shall be no order as to costs.
- (d) The parties to act on the authenticated copy of this order.
- (e) The parties are directed to appear before the learned Collector on 15th January, 2018.

(f) The learned Collector or the Officer who has been delegated power by the Collector specified under section 23(2A) of the Mamlatdar's Courts Act, 1906 shall decide the revision application on its own merits without being influenced by the observations made by the Sub-Divisional Officer in the impugned order.

(R.D.DHANUKA, J.)