

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11417 OF 2014

Rajkumar G. Zagade

..... Petitioner

VERSUS

State of Maharashtra & Anr.

..... Respondents

Mr.Aniket P. Ranade for the Petitioner.

Mr.S.D.Rayrikar, A.G.P. for the State - Respondent no. 1.

Mr.Sanskar Marathe for the Respondent no.2.

CORAM : R.D.DHANUKA, J.

DATE : 11th DECEMBER, 2017

P.C.

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 17th September, 2010 passed by learned Additional Collector, Ratnagiri in RTS Appeal No.12 of 2008 under section 257 of the Maharashtra Land Revenue Code.

3. Some of the relevant facts for the purpose of deciding this petition are as under :-

4. It is the case of the petitioner that the petitioner no.1 and his family has been peacefully using pathway in the suit property bearing S.No.14/3, 27/2 and 28/3 situate in Village Shejawali, Taluka Rajapur, District Ratnagiri. The respondent no.2 has obstructed the peaceful use of pathway situated in the suit property. The petitioner accordingly filed an application under section 5 of the Mamlatdar's Courts Act, 1906 and prayed for clearance of the obstruction. On 10th February,2006, the learned Tahsildar allowed the said application under section 5 of the Mamlatdar's Courts Act, 1906.

5. Being aggrieved by the said order, respondent no.2 preferred an appeal under section 23 of the Mamlatdar's Courts Act, 1906 in the Court of Sub-Divisional Officer, Ratnagiri. It is the case of the petitioner that though the petitioner has raised an objection about the jurisdiction of the learned Sub-Divisional Officer to entertain the said revision application, the learned Sub-Divisional Officer considered the said revision application. However, by an order dated 14th February,2008, the learned Sub-Divisional Officer dismissed the said appeal preferred by respondent no.2. Being aggrieved by the said order dated 14th February,2008, the respondent no.2 herein preferred RTS Revision Application No.12 of 2008 before the learned Additional Collector, Ratnagiri under section 257 of the Maharashtra Land Revenue Code.

6. The learned Collector passed an order on 17th September,2010 and quashed the said order dated 14th February,2008 passed by the Sub-Divisional Officer and also the order dated 10th February,2006 passed

by the learned Tahsildar.

7. The petitioner thus filed this petition on various grounds. The main contention of the petitioner is that the collector has no power to delegate his power under section 23(2A) of the Mamlatdar's Courts Act, 1906 to the Sub-Divisional Officer and thus at the first instance, the Sub-Divisional Officer could not have decided the appeal filed by the respondent no.2 under section 23 of the Mamlatdar's Courts Act, 1906. He submits that though an objection of jurisdiction was raised by the petitioner before the Sub-Divisional Officer, he still exercised his alleged power and decided the appeal. He submits that the learned Collector or only his subordinates described in section 23(2A) of the Mamlatdar's Courts Act, 1906 and were delegated with such powers could have heard and entertained the said appeal filed under section 23 by the respondent no.2. He submits that since the order passed by the Sub-Divisional Officer itself was without jurisdiction, the learned Collector could not have passed any order purportedly exercising the powers under section 257 of the Maharashtra Land Revenue Code.

8. Learned counsel for the respondent no.2 on the other hand submits that even if the Sub-Divisional Officer had no power to pass any order on the appeal filed by the respondent no.2 under section 23, the fact remains that the revision application under section 257 of the Maharashtra Land Revenue Code ultimately came to be decided by the Collector and thus no prejudice of any nature would be caused to the petitioner.

9. The issue as to whether the Collector could have delegated his power by exercising powers under section 23(2A) to the Sub-Divisional Officer or not is already decided by this Court in Writ Petition No.11598 of 2014 today and it is held that the Collector could not have delegated his power to Sub-Divisional Officer under the said provision. In my view, the said judgment would squarely apply to the facts of this case. This court has delivered the said judgment after considering the other four judgments of this court holding that the collector had no power to delegate his powers to the Sub-Divisional Officer under section 23(2A) of the Mamlatdar's Courts Act, 1906.

10. Insofar as submission of the learned counsel for the respondent no.2 that ultimately the matter is decided by the collector by exercising powers under section 257 of the Maharashtra Land Revenue Code, 1966 and thus no prejudice would be caused to the petitioner is concerned, in my view there is no merit in this submission of the learned counsel for the respondent no.2. At the first instance, the Sub-Divisional Officer himself could not have decided the appeal under section 23 in view of the fact that the collector could not have delegated any such powers vested in him to the Sub-Divisional Officer. The said order thus passed by the Sub-Divisional Officer is without jurisdiction and illegal. In view of this position in law, the learned Collector could not have himself decided the second revision application under section 257 of the Mamlatdar's Courts Act, 1906. Be that as it may, the collector had no power to entertain second revision application under section 257 of the Maharashtra Land Revenue Code. In my view, the order passed by the Sub-Divisional Officer under section 23 and the order passed by the

Additional Collector under section 257 of the Maharashtra Land Revenue Code are illegal and without jurisdiction and thus deserves to be set aside.

11. I, therefore, pass the following order :-

(a) Impugned order dated 14th February, 2008 passed by the Sub-Divisional Officer and the order dated 17th September, 2010 passed by learned Additional Collector, Ratnagiri are set aside. Appeal No.SR-1/2006 is restored to file. The said appeal shall be heard by the learned Collector or by any of the Officer subordinate to him on whom such powers are delegated under section 23(2A) of the Mamlatdar's Courts Act, 1906 and not by the Sub-Divisional Officer.

(b) The parties are directed to remain present before the learned Collector on 15th January, 2018. It is made clear that the learned Collector or the Officer who would be delegated powers under section 23(2A) of the Mamlatdar's Courts Act, 1906 shall decide the appeal filed by the respondent no.2 on its own merits without being influenced by the observations made by the learned Sub-Divisional Officer as well as the Assistant Collector in the impugned orders and set aside by this order,

expeditiously.

(c) Rule is made absolute in the aforesaid terms.

(d) The parties as well the learned Collector to act on the authenticated copy of this order.

(R.D.DHANUKA, J.)