IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 7822 OF 2017

JANARDHAN JAGANNATH SATPUTE AND ANOTHER
VERSUS
PANDIT BABURAO SONAWANE

WITH
WRIT PETITION NO. 7827 OF 2017

JAGANNATH SHANKAR SATPUTE AND OTHERS
VERSUS
PANDIT BABURAO SONAWANE AND ANOTHER.

...
Advocate for the Petitioners : Shri Garud N.C..
Advocate for the Respondents : Shri N.D.Sonawane.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st November, 2018

Per Court:

1 I have heard the learned Advocates for the respective sides.

2 There is no dispute that the injunction granted in RCS No.434/2015 in favour of the Plaintiffs, who are the Respondents in Writ Petition No.7827/2017, is with regard to the *Bandh* on the eastern side. As such, there is no dispute that the injunction clamped by the Trial Court is with regard to the eastern side and the proceeding pending before the Additional Collector in view of the Tahasildar having passed the order under Section 143 of the Maharashtra Land Revenue Code, 1966 in favour

of the Petitioners in Writ Petition No.7822/2017, who are the Plaintiffs in RCS No.463/2015, is with regard to the *Bandh* on the western side of the suit property.

3 In view of the above, the learned Advocate for the Petitioners in both these petitions, seeks leave to withdraw these petitions with a request that the Additional Collector may be directed to decide the pending proceeding on it's merits and the Trial Court may be directed to expeditiously decide RCS No.434/2015 and RCS No.463/2015.

4 Shri Sonawane, the learned Advocate for the Respondents in both these petitions, submits that the proceedings before the Tahasildar initiated by the Petitioners are under Section 5(2) of the Mamlatdars' Courts Act, 1906. Surprisingly, the order dated 18.12.2017 passed by the Tahasildar is under Section 143 of the Maharashtra Land Revenue Code, 1966, which is not permissible. Therefore, the Respondents have rightly preferred a revision under Section 23(2) of the Mamlatdars' Courts Act, 1906.

5 Shri Garud, learned Advocate for the Petitioners, submits that the proceedings initiated by the Respondents under Section 23(2) have been disposed of as the order of the Tahasildar was passed under Section 143 of the Maharashtra Land Revenue Code, 1966. The Respondents have, therefore, preferred a different proceeding bearing No.105, which is pending before the Sub Divisional Officer.

6 I need not go into the said issue as the proceedings are pending before the Additional Collector, who is competent to consider whether, the first proceeding initiated by the Petitioners was under Section 5(2) of the Mamlatdars' Courts Act, 1906 and if yes, then, the Tahasildar could not have passed an order under Section 143 of the Maharashtra Land Revenue Code, 1966, which is a completely different proceeding and the said Mamlatdar would, therefore, have no jurisdiction to *suo moto* convert the said proceeding from Section 5(2) of the Mamlatdars' Courts Act, 1906 to Section 143 of the Maharashtra Land Revenue Code, 1966.

7 These issues can be gone into by the Additional Collector and it is expected that the pending proceedings before the Additional Collector shall be decided expeditiously and in any case, on or before 31.01.2019. All contentions and objections, as well as, the issue of jurisdiction in view of the above, are kept open. The litigating sides shall appear before the Additional Collector, Aurangabad on 01.12.2018 at 11:00 AM.

8 In the meanwhile, the Trial Court is at liberty to consider both the pending suits expeditiously.

9 Both the Writ Petitions are disposed of with the above directions.

kps **(RAVINDRA V. GHUGE, J.)**