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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3942 OF 2018

Ibrahim Ismail Shaikh, since deceased,
through His Legal Heirs – Sharifabi I. Shaikh & Ors. ...Petitioners

V/s.

Jijaba D. Sumbe & Ors. ...Respondents

Mr.Nitin P. Deshpande for the Petitioners.

Mr.Chaitanya Nikte for the Respondent Nos.1 to 5.

Ms.G.R. Golatkar, A.G.P. for the State – Respondent Nos.7 and 8.

CORAM : R.D. DHANUKA, J.

DATE : 4TH APRIL, 2018.

P.C. :-

1. Rule. Learned counsel appearing for the respondent Nos.1 to 5 waives service. Learned A.G.P. waives service for the respondent nos.7 and 8. By consent of parties the petition is heard finally.

2. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 4th December, 2017 passed by the learned Sub-Divisional Officer, Haveli, District Pune in RTS / Revision Application No.789 of 2016.

3. This Court by a judgment and order dated 11th December,

2017 in case of **Shri Vilas Gajanan Bhujbal & Ors. vrs. Sou.Pushpa Chandrakant Dabhade & Ors.** in Writ Petition No.11598 of 2014, has held that the Sub Divisional Officer was not empowered to decide the revision under section 23(2A) of the Mamlatdar's Courts Act, 1906. In my view, the Sub Divisional Officer thus had no jurisdiction to pass an order in the said Revision Application.

4. The impugned order dated 4th December, 2017 passed by the learned Sub-Divisional Officer is set aside. The RTS / Revision Application No.789 of 2016 is restored to file before the learned Additional Collector, Pune. The Collector himself shall decide the said revision application or delegate such powers to one of the officers referred in section 23(2A) of the Mamlatdar's Courts Act, 1906, without being influenced by the observations made and the conclusion drawn in the impugned order dated 4th December, 2017 and in accordance with law after hearing the petitioner as well as he respondent nos.1 to 6.

5. The learned Sub-Divisional Officer is directed to transmit the papers and proceedings in the said revision application to the learned Additional Collector, Pune within one week from the date of communication of this order.

6. It is the case of the petitioners that the said order dated 4th

December, 2017 has not been implemented so far. The respondent nos.1 to 6 shall not implement the said order for a period of four weeks from today. The petitioners would be at liberty to apply for continuation of the interim protection granted by this Court before the learned Collector or before such officer who is empowered to decide the said revision application under section 23(2A) of the Mamlatdar's Courts Act, 1906. If any such application for continuation of interim protection is filed by the petitioners, the same shall be heard by the learned authority on its own merit. Such application shall be made by the petitioners within two weeks from today and a copy thereof shall be served upon the respondent nos.1 to 6. Reply to the said application shall be filed by the respondent nos.1 to 6 within one week from the date of service of the stay application. The learned authority shall decide the said application for interim stay within two weeks from the date of the respondent nos.1 to 6 filing affidavit in reply. If the pleadings are not complete within four weeks from today, the interim protection granted by this Court to continue till such time the learned authority considers the application for stay.

7. Learned Additional Collector himself or such officer who is empowered to decide the said revision application shall decide the matter afresh without being influenced by the observations made and the conclusion drawn in the impugned order dated 4th December,

2017. The learned Additional Collector or such officer, who is having power to decide the said revision application, shall dispose of the same within three months from the date of the first meeting.

8. The parties are directed to remain present before the learned Additional Collector, Pune on 16th April, 2018 at 11:00 a.m. If the learned Additional Collector has delegated his powers to any of the officers recorded under section 23(2A) of the Mamlatdar's Courts Act, the parties shall appear before such officer. The petitioners are directed to convey this order to the learned additional Collector, Pune and the learned Sub-Divisional Officer for compliance.

9. Rule is made absolute in aforesaid terms. No order as to costs.

10. All the parties to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)