

mujaheed

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9496 OF 2017

Shri. Digambar Yeshwant Garud ...Petitioner

V/s.

Shri Raosaheb Bhaurao Garud & Ors ...Respondents

Mr. Sugandh B. Deshmukh for Petitioner.

Mr. S.D. Rayrikar, AGP for State/Respondent Nos. 2 & 3.

CORAM : R.D. DHANUKA, J.
DATE : 27TH MARCH, 2018.

P.C. :-

1. The learned counsel appearing for the petitioner states that respondent no.1 is served and tenders affidavit of service. No one appeared for respondent no.1 when the matter was called out. No affidavit in reply is filed.

2. Rule.

3. The learned AGP waives service for respondent nos. 2 and 3. By consent of the parties present, the matter is heard finally. The petitioner has impugned the order dated 11th April, 2017 as well as order dated 6th December, 2016 passed by the Sub Divisional Officer, Yewala District Nashik.

4. This Court in case of Vilas Gajanan Bhujbal and Ors Vs. Pushpa Chandrakant Dabhade in Writ Petition No. 11595 of 2014 in the judgment delivered on 11th December, 2017 has held that the Sub

Divisional Officer has no power to decide the revision application under Section 23(2A) of the Mamlatdar's Courts Act, 1906. The said judgment of this Court applies to the facts of this case. I am respectfully bound by the said judgment.

5. Impugned order dated 11th April, 2017 in RTS Application No. 200 of 2016 as well as order dated 6th December, 2016 passed by the learned Sub Divisional Officer in RTS Revision No. 139 of 2017 are quashed and set aside. RTS Revision No. 139 of 2017 is restored to file before the learned Additional Collector, Nashik. The learned Additional Collector shall himself hear the said revision application or the same shall be heard by one of the officer referred under Section 23(2A) of the Mamlatdar's Courts Act, 1906 within four months from the date of first meeting and without being influenced by the observations made by the learned Sub Divisional Officer in the impugned orders dated 11th April, 2017 and 6th December, 2016 and in accordance with law.

6. The learned Sub Divisional Officer, Yewala shall transmit the papers and proceedings in RTS Revision No. 139 of 2017 to the learned Additional Collector, Nashik within one week from the date of communication of this order. The petitioner as well as respondent no.1 shall appear before the learned Additional Collector, Nashik on 11th April, 2018 at 03.00 p.m. The petitioner is directed to convey

this order to to respondent no.1 as well as the learned Additional Collector and Sub Divisional Officer, Yewala for compliance. Affidavit of service shall be filed by the petitioner before the learned Additional Collector, in so far as the communication of this order upon respondents is concerned.

7. Rule is made absolute in the aforesaid terms. There shall be no order as to costs. The parties as well as the authorities to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)