

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 10609 OF 2017****Sadu Dadu Deshmukh****..... Petitioner****VERSUS****Dnyanu Pandu Mohite & Ors.****..... Respondents**

Ms.Priti Walimbe, a/w. Mr.Tejas Pawar, i/b. Mr.Bhushan Walimbe for the Petitioner.

Mr.Umesh H.Pawar for the Respondent nos. 1 and 2.

Mr.S.H.Kankal, A.G.P. for the State – Respondent nos. 3 to 5.

CORAM : R.D. DHANUKA, J.

DATE : 5th MARCH, 2018

P.C.

Learned counsel for the petitioner states that the respondent no.2 has been served by pasting of the notice on the door of the respondent no.2. He states that the respondent no.1 also has been served. Mr.Kankal, learned A.G.P. waives service for the respondent nos. 3, 4 and 5. Learned counsel for the petitioner states that respondent nos. 6 to 8 are also served.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 12th April, 2017 passed by the Sub-Divisional Officer, Walwa at Islampur in Appeal No.Rasta Adhathala/Appeal/154/2016.

3. In catena of decisions, this court has taken a view that the

collector has no power to delegate the powers to the sub-divisional Officer under section 23(2A) of the Mamlatdar Courts Act, 1906. The impugned order thus passed by the Sub-Divisional Officer on 12th April, 2017 is set aside.

4. Appeal No. Rasta Adhathala/Appeal/154/2016 is restored to file before the learned Collector, District Sangli.

5. The learned Collector himself shall hear the appeal or the same shall be heard by one of the officer who has been delegated with such powers under section 23(2A) of the Mamlatdar Courts Act, 1906. The Sub-Divisional Officer is not one of the officer referred in section 23(2A) of the Mamlatdar Courts Act, 1906. I, therefore, pass the following order :-

(a) The impugned order dated 12th April, 2017 passed by the Sub-Divisional Officer is set aside.

(b) Appeal No. Rasta Adhathala/Appeal/154/2016 is restored to file before the learned Collector, District Sangli. The learned Collector shall himself dispose of the said appeal or shall delegate powers to one of the officer referred in section 23(2A) of the Mamlatdar Courts Act, 1906. The learned Collector or such officer who is delegated with such powers shall decide the matter afresh without

being influenced by the observations made and conclusion drawn in the impugned order dated 12th April, 2017 passed by the Sub-Divisional Officer, Walwa at Islampur in Appeal No.Rasta Adhathala/Appeal/154/2016 expeditiously.

6. Writ petition is disposed of in the aforesaid terms.
7. The petitioner is directed to remain present before the learned Collector, Sangli on 22nd March,2018.
8. The parties to act on the authenticated copy of this order.
9. The petitioner is directed to convey this order to the other respondents who are absent before this court today.
10. No order as to costs.

[R.D. DHANUKA, J.]