

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 2656 OF 2018****Sunil Janardhan Vasmale****..... Petitioner****VERSUS****Rajaram Namdeo Thombare & Ors.****..... Respondents**

Mr.S.M.Katkar, i/b. Ms.Manisha A.Devkar for the Petitioner.

Mr.Ashok R.Metakari for the Respondent nos. 1 and 2.

Mr.S.D.Rayrikar, A.G.P. for the State, Respondent no.3.

CORAM : R.D. DHANUKA, J.**DATE : 10th APRIL, 2018****P.C.**

Rule. Learned counsel for the respondent nos.1 and 2 waives service. Mr.Rayrikar, learned A.G.P. waives service for the respondent no.3.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 12th July, 2017 passed by the Sub-Divisional Officer, Mangalwedha in revision application bearing No. RTS/SR/1263/2016. This court in case of ***Shri Vilas Gajanan Bhujbal & Ors. vs. Sou.Pushpa Chandrakant Dabhade & Ors.*** in Writ Petition No.11598 of 2014 dated 11th December, 2017 has held that the Sub-Divisional Officer has no power to decide the revision application under section 23(2A) of the Mamlatdars' Courts Act, 1906. The said judgment applies to the facts of this case. I am respectfully bound by the said judgment. In my

view the Sub-Divisional Officer who has entertained the revision application filed by the respondent nos. 1 and 2 is without jurisdiction and thus the impugned order deserves to be set aside.

3. Learned counsel for the respondent nos. 1 and 2 invited my attention to the judgment delivered by this court in case of ***Mohammad Khan s/o. Rahim Khan vs. Shankar s/o. Maroti Dhage and another, (2017) 3 Mh.L.J. 135*** and would submit that the order passed by Mamlatdar under section 5 and the order passed under section 22 of the Mamlatdars' Courts Act, 1906 would not attain finality and there is no bar of jurisdiction of the civil court to entertain and decide the suit challenging either order passed by under section 5 or section 23 of the Mamlatdars' Courts Act, 1906. He submits that the remedy of the petitioner thus would be to file a civil suit. In his alternate submission, it is submitted that in furtherance of the impugned order, the learned Tahsildar has already initiated a fresh enquiry.

4. Learned counsel appearing for the petitioner in rejoinder submits that since the learned Sub-Divisional Officer has passed an order without jurisdiction and since the rights of the petitioner are seriously affected, the petitioner is entitled to file this writ petition under Article 227 of the Constitution of India. He submits that though the learned Tahsildar had fixed the matter on 18th February, 2018 for the purpose of conducting a fresh enquiry, the said revision application filed by the petitioner which is remanded to the learned Tahsildar is still pending and a fresh enquiry has not been held by the learned Tahsildar. The

statement made by the learned counsel for the petitioner is accepted.

5. In my view, since the Sub-Divisional Officer cannot be delegated with any powers by the collector under section 23(2A) of the Mamlatdars' Courts Act, 1906 in view of the fact that the Sub-Divisional Officer is not the officer referred under the said provisions, the order passed by the Sub-Divisional Officer allowing the revision application filed by the respondent nos. 1 and 2 on 12th July, 2017 is without jurisdiction. Learned Tahsildar thus cannot proceed with the fresh enquiry as ordered by the learned Sub-Divisional Officer in the order dated 12th July, 2017.

6. The rights of the petitioner are prejudiced in view of the order passed by the Sub-Divisional Officer which is without jurisdiction. The petitioner is thus entitled to invoke the jurisdiction of this court under section 227 of the Constitution of India.

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

(a) Order dated 12th July, 2017 passed by the Sub-Divisional Officer is set aside.

(b) Revision application bearing No. RTS/SR/1263/2016 filed by the respondent nos. 1 and 2 is restored before the learned Additional Collector, Solapur for deciding the matter afresh without being influenced by the observations made and the conclusions drawn in the order dated 12th

July, 2017. The said revision application shall be heard by the Additional Collector, Solapur himself or by one of the officer who is delegated with such powers and whose name is referred in section 23(2A) of the Mamlatdars' Courts Act, 1906.

(c) A fresh order shall be passed after hearing both the parties.

(d) Learned Sub-Divisional Officer shall transmit the papers and proceedings of the said revision application to the learned Additional Collector, Solapur within one week from the date of communication of this order.

(e) The parties are directed to appear before the learned Additional Collector, Solapur on 24th April, 2018 at 03.00 p.m.

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

(g) Revision application shall be disposed of expeditiously by the learned Collector or such officer is authorized to hear and decide the revision application.

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

[R.D. DHANUKA, J.]