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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12811 OF 2017

Anna Shankar Dhotre & Anr

...Petitioners

V/s.

Vilas Mukund Apsunde & Ors

...Respondents

Mr. Ashok T. Gade for the Petitioners.

Ms. Kavita N. Solunke, AGP for State/Respondent Nos. 4 to 6.

CORAM : R.D. DHANUKA, J.

DATE : 13TH FEBRUARY, 2018.

P.C. :-

1. The learned counsel appearing for the petitioners states that all the parties are served. The learned AGP waives service for respondent nos. 4 to 6.

2. Admittedly in this case, the impugned order is passed by the Sub-Divisional Officer by purporting to exercise its alleged power under Section 23(2A) of the Mamlatdars Courts Act, 1906. It has been held by this Court in catena of decisions that the Sub-Divisional Officer is not empowered to pass any such order under Section 23(2A). The Collector cannot delegate powers to Sub-Divisional Officer and Sub-Divisional Officer is not one of the officer referred in Section 23(2A) of the Mamlatdars Courts Act, 1906. The impugned

order passed by the Sub-Divisional Officer is without jurisdiction and thus deserves to be set aside.

3. I therefore pass the following order:

(I) The writ petition is allowed in terms of prayer clause (a). The revision application i.e. RTS Revision No. 416 of 2012 is restored to file. The learned Collector himself shall decide the said revision application or can delegate such powers to one of the officer referred in Section 23(2A) of the Mamlatdars Courts Act, 1906 expeditiously.

(II) The Collector or the officer who is delegated with such powers shall decide the matter afresh without being influenced by the reasons recorded by the Sub- Divisional Officer in the impugned order and the conclusion drawn therein and shall pass an order in accordance with law.

(III) The learned Collector or such other officer who is delegated with such powers shall decide the matter within six months from the date of the first meeting. The petitioners are directed to remain present before the learned Collector on 28th February, 2018 at 03.00 p.m. The parties as well as learned Authority to act on the authenticated copy of this order. Writ petition is allowed in the aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)