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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11915 OF 2012

Mrs. Ranjana Gajanan Kuthe & Ors

...Petitioners

V/s.

Satyavan Gajanan Mhatre & Ors

...Respondents

Mr. Rajesh Parab for the Petitioners.

Mr. S.H. Kankal, AGP for the Respondent No.4.

Mr. Sandip Mahadik for Respondent Nos. 1A, 1B, 2 & 3.

Mr. Vijay Gharat for Respondent No.11.

CORAM : R.D. DHANUKA, J.

DATE : 31ST JANUARY, 2018.

P.C. :-

1. All the parties are served. By an order dated 28th January, 2013 passed by Justice B.R. Gavai, notice was issued for final disposal.

2. By this petition filed under article 227 of the Constitution of India, the petitioners have impugned the order dated 16th December, 2011 passed by the learned Tahsildar Uran in Application No. 3 of 2011 filed under Section 5 of the Mamlatdar Court 1906 and also order dated 12th October, 2012 passed by the learned Sub Division Officer, Panvel in Appeal No. 67 of 2011.

3. This Court by a judgement and order dated 11th December, 2017 in the case of Shri Vilas G. Bhujbal Vs. Smt. Pushpa C. Dabhade has held that the Sub Divisional Officer was not empowered to decide the appeal under Section 23(2A) of the Mamlatdar Court Act, 1906. The Sub-Divisional Officer thus had no jurisdiction to pass any order on the said Appeal No. 67 of 2011. The said appeal could be decided only by an officer who is specifically described and who can be delegated with such powers by the Collector. Sub-Divisional Officer is not one of the Officer who can be delegated with such powers.

4. Judgement and order dated 12th October, 2012 in Appeal No. 67 of 2011 is thus set aside. Appeal No. 67 of 2011 is restored to file. The said appeal shall be heard by the Collector or by one of the Officer described in Section 23(2A) of the Mamlatdar Court Act, 1906 in accordance with law.

5. The authorised appellate officer shall decide the matter afresh and in accordance with law without being influenced by the observations made and conclusions drawn in the order dated 12th October, 2012. The appeal shall be disposed of expeditiously and in any event within three months from the date of communication of this order.

6. Parties are directed to co-operate with each other and with the concerned Officer in disposal of the appeal. The parties as well as the Officer to act on the authenticated copy of this order. Writ petition is disposed of in the above terms. No order as to costs.

(R.D. DHANUKA, J.)