

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

950 WRIT PETITION NO.11434 OF 2019

VISHAL VIJAYRAO KHOSARE
VERSUS
THE STATE OF MAHARASHTRA
THROUGH DIVISIONAL COMMISSIONER AND OTHERS

...

Advocate for Petitioner : Mr Ubale Mahesh B.
AGP for Respondents : Mr P G Borade
Advocate for Respondent No. : Mr Yuvraj V Kakde

**CORAM : S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.**

DATE : 3rd October, 2019

ORDER:

1. Mr Ubale, the learned counsel for the petitioner submits that the proceedings before the additional commissioner are required to be transferred before the Commissioner in view of the fact that the Additional Commissioner does not have jurisdiction to entertain the proceeding under section 16 of the Maharashtra Village Panchayats Act.

2. Learned counsel has placed reliance on the judgment of the learned Single Judge of this Court in **Atmaram Chapa Sandanshiv Vs. Shamshadbi Bashir Shaikh Fakir**, reported in in 2008 (3) Mh.LJ. 906. He also relied on the judgment of Division Bench of this Court in the case of **Nandkishore Mohanlal Lahoti Vs. State of**

Maharashtra and others, reported in 2006(6) Mh.L.J.552 to contend that delegatee cannot sub delegate his powers. The powers are delegated to the Commissioner by the State Government. The same cannot be sub delegated by the Commissioner. The learned counsel also relies on the judgment of the Apex Court in the case of **Hari Chand Aggarwal Vs. The Batla Engineering Co. Ltd., reported in AIR 1969 SC 483** to submit that the powers are required to be exercised by the authorities to whom the powers are vested under the Statute and by no other.

3. Mr Kakade, the learned counsel for respondent No.3 submits that the judgment of the learned Single Judge of this court in case of **Atmaram Chapa Sandanshiv** (supra) has been held to be a not a good law by the Division Bench of this Court in a reference made to it in Writ Petition No. 2616/2008 and other connected writ petitions decided under judgment dated 07.01.2009. The Additional Commissioner is competent to deal with the said proceedings. The petitioner had also earlier moved an application for transfer of the proceedings from the office of the Additional Commissioner. The petitioner approached this Court against the order of the Commissioner. This Court rejected the writ petition filed

by the petitioner.

4. The petitioner in the present matter is seeking transfer on the ground that the Additional Commissioner has no jurisdiction to try and entertain the dispute under section 16 (2) of the Maharashtra Village Panchayats Act. Earlier rejection of the writ petition as such would not be of any avail.

5. Issue is no longer res integra in view of the authoritative pronouncement of the Division Bench of this Court in the reference made to it. In Writ Petition No. 2616/2008, under judgment dated 07.01.2009, the Division Bench has held that the powers under section 16 can be exercised by the Additional Commissioner in view of the notification dated 27th April, 1977 issued by the Rural Development Department in exercise of powers conferred by sub section 2 of section 13 of the Maharashtra Land Revenue Code.

6. In view of the judgment of the Division Bench of this Court in Writ Petition No. 2616/2008 holding that the Additional Commissioner has jurisdiction to entertain such dispute and further observation that judgment of the learned Single Judge of this Court in

case of **Atmaram Chapa Sandanshiv** (supra) is not a good law, the contention of the petitioner does hold water.

7. In light of above, the writ petition is disposed of. No costs.

(ANIL S. KILOR, J.)

(S.V.GANGAPURWALA, J.)

JPC