

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2169 OF 2017
WITH
CIVIL APPLICATION NO. 1615 OF 2018
IN
WRIT PETITION NO. 2169 OF 2017
WITH
WRIT PETITION NO. 2603 OF 2017
WITH
CIVIL APPLICATION NO. 1616 OF 2018
IN
WRIT PETITION NO. 2603 OF 2017**

Maruti Patilbuwa Kale & Ors.Petitioners

V/s.

Navnath Bhikaji Kale & Ors.Respondents

Mr. Drupad S. Patil for the petitioners.

Mr. Chetan R. Nagare for respondent nos.1 to 3.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 29th JANUARY, 2019.**

P.C.:

. With consent, petitions are taken up for final hearing at the stage of admission.

2. The petitioners herein have challenged the order dated 22/12/2016 passed by the learned Sub-Divisional Officer, Junnar dismissing the Revision Application No.136/2014 and thereby confirming the order dated 11/04/2016 passed by the learned

Tahasildar, Ambegaon in proceedings filed under Section 5 of the Mamlatdar Court's Act, 1906.

3. Heard Mr. Drupad Patil, learned counsel for the petitioners and Mr. Chetan Nagare, learned counsel for respondent nos.1 to 3. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. The respondent nos.1 to 3 had filed an application before the learned Tahasildar, Ambegaon claiming access through property under Survey No. 322 sub-division 1, 2 and 3 of village Ghodegaon, Kadambavasti. The petitioner herein had filed an application to transfer proceedings from Tahasildar, Ambegaon on an apprehension that the learned Tahasildar was biased. By order dated 04/12/2015, the learned Additional Collector, Pune allowed the application for transfer and transferred the proceedings to Tahasildar, Junnar with directions to dispose of the same on merits within a period of three months. The records reveal that the copy of the said order dated 04/12/2015 was served on Tahasildar, Ambegaon. Despite the transfer order, the Tahasildar, Ambegaon has proceeded to decide the said matter on merits. The petitioner had raised this ground in the revision

application. The learned Sub-Divisional Officer, Junnar, Ambegaon Sub-Division, Manchar (Pune) has brushed aside the said ground by holding that the Tahasildar, Ambegaon was also competent to decide the application under Section 5 of the Mamlatdar's Court Act. Suffice it to say that the Collector who is the administrative head, had already transferred the proceedings from Tahasildar, Ambegaon to Tahasildar, Junnar and since the said order was already served on Tahasildar, Ambegaon, he was not competent to proceed with the said proceedings. As indicated earlier, the proceedings were transferred in view of the apprehension of bias expressed by the petitioner. It was, therefore, all the more essential for the Tahasildar to refrain from deciding the matter. However, the Tahasildar proceeded to decide the matter without even giving an opportunity of hearing to the petitioner forgetting the oft repeated phrase that justice must not only be done but seen to be done.

5. Under the circumstances, the impugned orders cannot be sustained. Hence, the following order :-

- (i) The petitions are allowed.
- (ii) The impugned order dated 22/12/2016 passed by the Sub-

Divisional Officer, Junnar, Ambegaon Sub-Division, Manchar (Pune) and order dated 11/04/2016 passed by the Tahasildar, Ambegaon (Pune) are set aside.

(iii) The petitions are remanded to the Tahasildar, Junnar to dispose of the same as expeditiously as possible and in any event within a period of three months.

(iv) Both parties are directed to appear before the Tahasildar, Junnar on 11/02/2019.

6. Petitions stands disposed of in above terms. Civil Applications are disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)