

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**WRIT PETITION NO.4486 OF 2016**

(Shri Laxman Nagorao Pathare and others Vs. Shri Krushkumar Marotrao Pathare  
and others)

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*Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's Orders.*

*Court's or Judge's orders.*

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Shri K.N. Dadhe, Advocate for Petitioners.  
Shri S.N. Gaikwad, Advocate for Respondent No.1.  
Shri A.A. Madiwale, AGP for Respondent Nos.2 & 3.

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE: 8<sup>th</sup> JANUARY, 2020.**

1] On 06.01.2020, after hearing the learned Advocates for the respective sides and the learned AGP on behalf of respondent nos.2 and 3, the following order was passed:-

*1] This Court had issued notice on 15.2.2017 in view of the issue raised before this Court that the Sub-Divisional Officer under the Maharashtra Land Revenue Code does not have the jurisdiction to function as the Revisional Authority under Section 23(2) of the Mamlatdars' Courts Act, 1906.*

*2] In Writ Petition No.7839/2017 (Kashiram Asaram Ghadge and others V/s. Ramdas Bhanudas Pund and another), decided on 30.10.2017, the Single Judge at Aurangabad (Coram : Myself) had taken a view on the basis of a categorical statement made by the A.G.P. on behalf of the State of Maharashtra that all Sub-Divisional Officers under the MLR Code are Deputy Collectors and they have been authorized to perform the function of a Revisional Authority under Section 23(2).*

*3] Considering the said view, and other judgments, the Single Judge Bench (A.S. Chandurkar, J.) at Nagpur referred the matter to the Hon'ble the Chief Justice proposing a constitution of a Larger Bench. Consequently, by judgment dated 31/7/2019 in Writ Petition No.387/2017 (Prashant Prabhakarrao Mukkawar V/s. SDO, Pusad and others and Writ Petition No.8235/2017 (Doma Motiram Raut and Others V/s. State of Maharashtra and others), the Larger Bench concluded that the view taken in Kashiram Asaram Ghadge and others V/s. Ramdas Bhanudas Pund and another (supra) was correct and as the Sub-Divisional Officers – Deputy Collectors under the MLR Code are the Revisional Authorities under the Mamlatdar's Courts Act, they are authorized to perform the said function under Section 23(2).*

*4] In view of the above, the issue raised by the petitioners in no longer res integra.*

*5] The learned Advocate for the petitioners submits that he would be prepared on the merits of the matter on 8.1.2020.*

*6] As such, list this petition on 8.1.2020. It is made clear that no interim relief has been granted to the petitioners.*

2] The petitioners are the original opponents before the Mamlatdar in an application filed by respondent no.1 under Section 5(2) of the Mamlatdars' Courts Act, 1906. The petitioners are aggrieved by the order dated 27.08.2014 passed by the Mamlatdar and the order dated 14.12.2015 passed by the Revisional Authority under Section 23(2).

3] The petitioner had relied upon a view taken by

this Court at Nagpur in *Bija Maroti Hatwar v. Kisan Chirkut Padole and another*, reported in 2015(1) Mh.L.J. 282, to contend that the Sub-Divisional Officer cannot perform the duties of a Revisional Authority under Section 23(2). It is by the judgment of the learned Larger Bench of this Court dated 31.07.2019 delivered in Writ Petition No.387/2017 vide which the view taken in *Bija Maroti Hatwar (supra)*, has been held to be bad in law. Keeping in view that the Sub-Divisional Officers under the MLR Code in the State of Maharashtra are Deputy Collectors and are delegated with the power to perform duties as Revisional Authority under Section 23(2), the Larger Bench settled the dispute.

4] Respondent no.1 had approached the Mamlatdar with a case that these petitioners had blocked his path way of entry to his farm Survey No.14. He used to use the cart-way touching the Kawthal Bhambora road running south north which is adjacent to the land Survey No.12/2 belonging to the petitioner. He was required to travel on the borders of the said land and cross over into his land Survey No.14. He alleged that the petitioners had created blocks in the said path and had unloaded sand, stones and cement poles so as to erect a compound wall – fencing which would block the path of the respondent no.1.

5] The learned Advocate for the petitioner relies upon the map at page no.15 of the petition paper book which was prepared by an engineer at the behest of respondent no.1. The path identified as A-B-C was the way available to respondent no.1 to enter his land Survey No.14

at the junction-C. Contention is that there is a *nala* which flows downwards towards the south side and respondent no.1 should travel by the *nala* and enter land Survey No.14.

6] I have perused the spot inspection report and the map prepared by the revenue authorities. It is apparent from the report and the order of the Mamlatdar that the spot inspection revealed the existence of the path which respondent no.1 claims to have been using and the petitioners had attempted to block the said path. The spot inspection when perused along with the map prepared by the revenue authorities, clear all doubts about the existence of the cart-way being used by respondent no.1 in order to enter his land Survey No.14.

7] Considering the above, I do not find that the impugned orders could be termed as being perverse or erroneous. This petition, being devoid of merit, is dismissed.

**(Ravindra V. Ghuge, J.)**