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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2199 OF 2021**

Dr. Ashwinsinh M. Parmar

.... Petitioner.

V/s

The Collector

Dadra and Nagar Haveli

Silvassa and Others

.... Respondents.

Ms. Bhavna A. Anklesaria for the Petitioner.

Mr. H.S. Venegaonkar for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: JUNE 06, 2022

P.C.:-

1] Heard.

2] Pursuant to the proceedings initiated by the Petitioner, Resident Deputy Collector on 15/4/2019 has passed the following order:-

“O R D E R

(1) The land bearing Survey No.186/1/1, Plot No.106 admeasuring 0.80 Hect. of village-Silli allotted to Shri Laxi Bablu Mohankar, vide Land Reforms Officer, Silvassa's Order dated 21/06/1982 issued in Marathi language and the Second Order dated 21/06/1982 issued by the Land

Reforms officer, Silvassa in Gujarati language are hereby treated as cancelled. The above said land is entered in the name of Govt. i.e. “Shree Sarkar” as per revenue records.

(2) The Survey Department, Silvassa had issued map in the year 2000 to Smt. Jituben Laxi for the land bearing No.Survey No.81/1/1(106) of village-Silli, which is wrongly issued by the Survey Department, Silvassa, as per LRO’s Survey records and therefore, the above said map is also hereby treated as cancelled.

(3) Smt. Ramilaben Laxi Mohankar and her sons have attempted to tress pass in the Appellant’s land i.e. in the land of Survey No.81/1/1 of village-Silli, the said disputed portion of land was never cultivated by Smt. Ramilaben Laxi Mohankar and she has constructed Katcha hut / house in the Appellant’s land. Therefore, Smt. Ramilaben Laxi Mohankar is hereby directed to remove the Katcha hut / house from the Appellant’s land and to vacate the said land within a period of 15 days from the receipt of this order, at her risk and cost.

(4) As per Pachkyas of villalge-Silli drawn by the concerned Patel Talati and the concerned Surveyor and the map prepared by the concerned Surveyor of the Survey Department, Silvassa of the land bearing Survey

No.81/1/9, Plot No.114, admeasuring 0.80 Hect. out of total area 0.81 H.A. of village-Silli, which are placed in the relevant file, and as the said land is a govt. land and also open land, therefore, land bearing Survey No.81/1/9, Plot No.114 admeasuring 0.80 Hect. out of 0.81 H.A.a of village-Silli is hereby allotted to Smt. Ramlilaben Laxi Mohankar, Laxi Bablu Mohankar, as per map enclosed herewith.”

3] Respondent Nos. 2 and 3 instead of filing regular proceedings in the form of appeal, filed Review Application before the Collector, who, in turn, passed an order impugned dated 20/01/2021.

4] Contentions of Counsel for the Petitioner are, the order of Resident Deputy Collector passed on 15/4/2019 granting injunction in favour of the Petitioner is appealable one before the competent authority. According to her, Respondent Nos. 2 and 3 have chosen not to file appeal, whereas the Collector without any authority of law has entertained Review Application and passed the impugned order. According to her, even today also, Respondent Nos. 2 and 3 have chosen not to file statutory appeal before the competent authority questioning the order passed by the Resident Deputy Collector. As such, according to her, the order impugned is not sustainable.

5] Mr. Venegaonkar, Counsel for Respondent No.1 would urge that

whether Respondent Nos. 2 and 3 have preferred an appeal and, if so, any interim order is passed therein is not within his knowledge. He would further urge that Respondent Nos. 2 and 3 may be directed to appear before this Court so as to assist the Court in deciding the present Writ Petition and to avoid passing of any conflicting orders.

6] I have appreciated the submissions.

7] Respondent Nos. 2 and 3 have chosen not to appear before this Court, though served. Resident Deputy Collector, while passing the order, has considered title documents, possession of the Petitioner and ordered injunction against Respondent Nos. 2 and 3. Respondent Nos. 2 and 3 sought review of the same before the Collector. Fact remains that against the order of Resident Deputy Collector, Collector cannot be a Reviewing Authority and as such Collector ought not to have passed the order impugned, thereby directing parties to maintain status quo. Fact remains that Collector is neither Reviewing Authority nor Appellate Authority and as such, order impugned is without jurisdiction.

8] Respondent Nos. 2 and 3 though are served have chosen not to support the order impugned.

9] In that view of the matter and having regard to the fact that it is not brought to the notice of this Court that Respondent Nos. 2 and 3 have chosen to prefer an appeal against the order of Resident Deputy

Collector, this Court is bound to quash and set aside the order impugned dated 20/1/2021 passed by the Collector by holding the same to be without jurisdiction. Order accordingly.

10] Petition stands allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)