

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

WRIT PETITION NO.1502/2023

Mr. Sarthak Rajesh Yawalkar and another

...Versus...

The State of Maharashtra, through Collector, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri Amol Mardikar, Advocate for petitioners
Mrs. M.A. Barabde, AGP for respondent nos.1 to 3/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 15/03/2023

1. Heard Shri Amol Mardikar, learned counsel for the petitioners. The petition challenges the order dated 14/02/2023 in revision filed by the petitioners, whereby the application for grant of interim stay has been rejected by the learned Sub Divisional Officer.
2. It is contended that since the revision was pending, it was incumbent upon the learned Sub Divisional Officer, in his revisional powers, to consider the plea for grant of stay and pass appropriate orders therein.
3. It is material to note that the provisions of Section 23 (2) of the Mamlatdars' Courts Act do not confer any power upon the revisional Court/Authority to pass any interim orders including an order of stay of the order which is challenged before him. The language of Section 23 (2) of the

Mamlatdars' Courts Act does not contemplate of any such authority or power conferred upon the learned Sub Divisional Officer in this regard. Thus, when there is an absence of power or any authority, the learned Sub Divisional Officer cannot be called upon to perform a duty in that regard.

4. Though Shri Amol Mardikar, learned counsel for the petitioners places reliance upon ***Shaikh Gulab Chandu Khatik Vs. State of Maharashtra and others, 1979 Mh.L.J. 167*** (para 4), it is material to note that what was under consideration therein was the power under Section 256 of the Maharashtra Land Revenue Code, which itself speaks about conferment of powers regarding stay of execution of orders. In the instant case, the provisions of Section 23 (2) of the Mamlatdars' Courts Act do not speak of any such power and therefore, the dictum in ***Shaikh Gulab Chandu Khatik*** (supra) is not applicable.

5. I, therefore, do not see any reason to interfere in the impugned order. The writ petition is therefore dismissed. No order as to costs.

6. Needless to say that the Sub Divisional Officer shall decide the mater as expeditiously as possible.

(AVINASH G. GHAROTE, J.)