



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

962 WRIT PETITION NO. 6496 OF 2023

Shahadeo Malhari Khedkar & anotherPetitioners

VERSUS

The State of Maharashtra & othersRespondents

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Mr. R. K. Kasat, Advocate holding for Mr. S. S. Thombre, Advocate for the Petitioners.

Mr. K. B. Jadhavar, AGP for the State.

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 8th AUGUST, 2024.

PER COURT :

1. Petitioners take exception to the orders dated 31.09.2021, in File No. 2018/ROR/KAVI/188 and 11.04.2018 in File No. Sanchika Kr. 2017/Jama-1/KAVI/CR16 passed by Respondent No. 3.

2. Learned counsel for the Petitioners submits that Respondent No. 7 initiated proceeding under Section 5 of the Mamlatdar Courts Act seeking grant of customary way from the common bandh of Gat No. 75. Learned Tahsildar decided the proceeding by order dated 11.04.2018. The Petitioners preferred the

proceeding in the nature of appeal before the Sub-Divisional Officer at Beed. However, on realising the mistake that the proceeding before the Sub-Divisional Officer should be in the nature of revision under Section 23(2) of the Mamlatdar Courts Act, Petitioners filed an application requesting the Sub-Divisional Officer to treat the proceeding under Section 23(2) of the Mamlatdar Courts Act in the form of revision. The said application is dated 07.01.2019. However, the learned Sub-Divisional Officer passed the impugned order dated 31.09.2011 rejecting the appeal/revision of the Petitioners on the ground that the appeal is not maintainable against the order passed under Section 5(2) of the Mamlatdar Courts Act.

3. Learned counsel appearing for Respondent No. 7 justifies the order and submits that the application dated 07.01.2019 filed by the Petitioners was not part of the file of the proceeding filed under Section 23(2) of the Mamlatdar Courts Act.

4. Be that as it may. The fact remains that the Petitioners had assailed the order passed under Section 5 of the Mamlatdar Courts Act before the Sub-Divisional Officer under Section 23(2) of the Act. The Petitioners have produced certified copy of the

application dated 07.01.2019 before this Court. Therefore, it cannot be denied that the Petitioners had made specific prayer before the Sub-Divisional Officer to treat the appeal as revision under Section 23(2) of the Act. In this backdrop, the learned Sub-Divisional Officer should not have rejected the proceeding under Section 23(2) of the Mamlatdar Courts Act only on the ground that it has been wrongly titled as appeal. Infact, it was obligatory on the part of the Sub-Divisional Officer to pass order on application dated 07.01.2019 moved by the Petitioners and permit correction in the title clause and treat the proceeding in the nature of revision. In that view of the matter, there is apparent jurisdictional error on the part of the Sub-Divisional Officer. Consequently, order dated 31.09.2021 passed by the Sub-Divisional Officer cannot sustain. Hence, the following order :-

ORDER

- (i) Writ Petition is allowed.
- (ii) Impugned order dated 31.09.2021 passed by the Sub-Divisional Officer, Beed in File No. 2018/ROR/KAVI/188, is quashed and set aside.
- (iii) The matter is remitted back to the Sub-Divisional Officer, Beed for fresh decision on the proceeding

instituted by Petitioners under Section 23(2) of the Mamlatdar Courts Act by treating the same as revision.

(iv) The parties to the proceeding shall appear before the Sub-Divisional Officer on 26.08.2024.

(v) The learned Sub-Divisional Officer shall allow the parties to make their submissions and if so desire, to file a detailed notes of argument and, decide the proceeding on its own merit within a period of 8 weeks from the date of appearance of the parties.

(vi) It is made clear that the order dated 03.04.2023 passed by the Sub-Divisional Officer thereby rejecting subsequent revision filed by the Petitioners shall not be an impediment to decide the present proceeding.

(S. G. CHAPALGAONKAR)
Judge