

VRJ

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

WRIT PETITION NO.6717 OF 2022

VAIBHAV
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Balu Chandarrao Khaladkar & Ors. ... Petitioners

V/s.

Baban Maruti Khaladkar & Ors. ... Respondents

Mr. N. V. Bandiwadekar, Senior Advocate with Ms. Bhakti Wast with Mr. Abhishek Deshmukh for the petitioners.

Mr. S. S. Patwardhan i/by Ms. Mrinal A. Shelar, for respondent Nos.1 to 6.

Ms. V. S. Nimbalkar, AGP for the State/respondent Nos.7 to 13.

CORAM : AMIT BORKAR, J.

DATED : MARCH 12, 2024

P.C.:

1. Challenge in this writ petition is to the order dated 18th April 2019 passed by the Additional Commissioner entertaining respondent Nos.1 to 6's application purportedly under section 48 of the Land Acquisition Act, 1894 and section 149 of the Maharashtra Land Revenue Code, 1966

2. By the impugned order, the Additional Commissioner has allowed the application and has directed modification of mutation entry No.195. Under the provisions of the Maharashtra Land Revenue Code, power to adjudicate on the entry in relation to

record of rights as regards immovable property is conferred with either Circle Officer or Tehsildar. Against such order, appeal under section 247 is provided to the Sub-Divisional Officer. The order of the Sub-Divisional Officer can be challenged before the Additional Collector. Against exercise of power in second appeal by Additional Collector, party has right of filing revision application under section 257 of the Maharashtra Land Revenue Code, 1966 before the Commissioner. Therefore, save and except power under section 257 by way of revision, the Commissioner could not have exercised power under section 149 of the Maharashtra Land Revenue Code, 1966.

3. Therefore, impugned order passed by the Additional Commissioner is without jurisdiction. Hence, despite availability of alternative statutory remedy by way of second revision, in view of judgment of the Apex Court in the case of **Whirlpool Corporation vs. Registrar of Trademarks, Mumbai** reported in (1998) 8 SCC 1, the impugned order deserves to be quashed and set aside.

4. Hence, the order dated 18th April 2019 passed by the Additional Commissioner, Pune, Division, Pune in application No.39 of 2016 is quashed and set aside.

5. The writ petition stands disposed of in above terms. No costs.

6. It is made clear that adjudication made by this Court or the Commissioner will not affect substantive rights of the parties over the immovable property.

(AMIT BORKAR, J.)