

Shabnoor

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

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AYUB
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WRIT PETITION NO.8211 OF 2016

Alka Madan Diwan

... Petitioner

V/s.

Tahsildar Bhore & Ors

... Respondents

Mr. Sandesh D. Patil a/w Mrs. Divya A Pawar – Patil
a/w Ms. Sonali P. Kunekar, for Petitioner.

Mr. Anish Khandekar, for Respondent Nos. 6 to 7.

Mr. S. D. Rayrikar, AGP for State/Respondent Nos.1 to
5 & 12 to 14.

CORAM : AMIT BORKAR, J.

DATED : APRIL 2, 2024

P.C.:

1. Challenge in this writ petition is to the orders dated 21 December 2013, 13 May 2016 and 7 July 2016 passed by the Additional Collector, Pune in RTS Appeal No.324 of 2012 whereby the two applications under Section 143 of the Maharashtra Land Revenue Code, 1966 and an application for recalling of such order have been rejected.

2. The residents of village Wadgaon Dal, Taluka Bhore, District Pune filed an application with Tehsildar under Section 143 of the Maharashtra Land Revenue Code, 1966 seeking relief of removal of obstruction of road. Another application was also filed under

the provisions of Section 143 of the Maharashtra Land Revenue Code, 1966 on 1 June 2011.

3. The Commissioner, by an order dated 17 April 2012, clubbed both the applications and transferred both the applications to the Collector, Pune for adjudication under Section 143 of the Maharashtra Land Revenue Code, 1966. The Collector, Pune transmitted both the applications to the Additional Collector, Pune. The Additional Collector, Pune by the impugned order exercised power under Section 143 of the Code which is the subject matter of the present writ petition.

4. Section 143 of the Code confers power on Tehsildar. Such power cannot be directed to be exercised by any other authority. If, any executive instructions, confers the power of Tehsildar and any other authority, in absence of source of power, the circular has no effect in law. The Commissioner under the provisions of the Maharashtra Land Revenue Code, 1966 had no authority to transfer the proceedings pending before the Tehsildar to be tried exclusively by the Tehsildar to the Collector and the Collector could not have transferred both the applications to the Additional Collector exercising purported power under Section 143 of the Code was without jurisdiction. Therefore, the impugned orders dated 21 December 2013 and 12 May 2016 are quashed and set aside.

5. Since, the issue as to whether the road in question is situated within the area of operation of the Tehsildar, Bhore and Tehsildar of Khandala is not adjudicated by any Authority. It would be in the

interest of justice and to avoid conflict of orders to direct the Tehsildar, Bhore to decide both the applications, therefore, the applications dated 28 April 2011 and 1 June 2011 stand transferred to the Tehsildar, Bhore to be decided as per Section 143 of the Code. The Tehsildar, Bhore shall grant opportunity of hearing to both sides and shall decide the applications in accordance with law on its own merits. The applications referred above, shall include revised applications or any other application seeking enforcement of alleged disputed right of way which is the subject matter of the present writ petition.

6. All contentions are kept open to be agitated before the Tehsildar, Bhore.

7. Parties shall appear before the Tehsildar, Bhore on **15 April 2024 at 10:30 a.m.**

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

(AMIT BORKAR, J.)