

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

WRIT PETITION NO. 2161 OF 2024

Sanjay Bhaurao Darekar

....Petitioner

: Versus :

Vijay Bhaurao Darekar & Ors.

....Respondents

Ms. Pranita P. Hingmire, *for the Petitioner.*

Mr. Suresh Sabrad *a/w. Ms. Neha Zanje, Mr. Pratik Sabrad, Ms. Gracy Saldana i/by. Mr. Pratik Sabrad, for Respondent Nos.3 and 4.*

Mr. Narayan G. Rokade, *for Respondent Nos.9 to 12.*

Mr. P.G. Sawant, *AGP for Respondent Nos.20 to 22-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 17 March 2025.

P.C. :

1) The petition challenges the order dated 22 September 2023 passed by the SDO, Niphad under the provisions of Section 23(2) of the Mamlatdar Courts Act, 1906 thereby setting aside the order passed by the Tehsildar on 20 July 2020 in Rasta Case No.11/2019. The SDO has remanded the proceedings before the Tehsildar for being decided afresh.

2) I have heard Ms. Hingmire, the learned counsel appearing for the Petitioner, Mr. Sabrad the learned counsel appearing for Respondent Nos.3 and 4, Mr. Rokade, the learned counsel appearing

for Respondent Nos.9 to 12, and Mr. Sawant, the learned AGP appearing for Respondent Nos.20 to 22-State.

3) The main point sought to be canvassed by Ms. Hingmire is that the Revision filed by the contesting Respondents was dismissed for non-prosecution by order dated 13 September 2021 and that application filed for restoration of the Revision was also rejected by order dated 2 November 2021. It is contended that the contesting Respondents erroneously approached the Additional Collector who issued a communication to the SDO suggesting decision of the Revision on merits.

4) Ms. Hingmire would accordingly contend that the SDO could not have decided the Revision on merits which had already been dismissed for non-prosecution. She would further submit that the Additional Collector did not have jurisdiction under the provisions of Mamlatdar Courts Act to issue any directives to the SDO.

5) Ms. Hingmire is not entirely wrong in contending that the Revision which was dismissed for default could not have been decided by the SDO merely on the basis of a communication received from the office of the Additional Collector. However, at the same time, it is observed that the SDO has recorded a finding of fact that the contesting Respondents were not served with notices by the Tehsildar before passing of order dated 28 July 2020. It is the contention of the Respondents that the Petitioner secured a collusive order dated 20 July 2020 against his brother without issuance of notices to the contesting Respondents who are real owners of the land in question. The finding of fact recorded by the SDO is not sought to be countered in any manner by producing any documentary evidence to indicate service of notices on the contesting Respondents. In that view of the matter,

though the procedure adopted by the SDO in deciding the Revision, which was dismissed for default, may not be strictly in accordance with law, the ultimate result achieved through such decision of SDO appears to be clearly valid. Petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India. The jurisdiction under Article 227 is corrective in nature and even if High Court comes across any error of law while passing the impugned order, it need not exercise the jurisdiction to set aside that order if ultimately it is found that the final effect of the order is valid. In my view, the final order passed by the SDO on 22 September 2023 ensures grant of opportunity to the contesting Respondents to participate in hearing before the Tehsildar, as well as while preparing the spot panchanama. I am therefore not inclined to interfere in the impugned order passed by the SDO. The petition is accordingly **rejected**.

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[SANDEEP V. MARNE, J.]