



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7839 OF 2017

**KASHIRAM ASARAM GHADGE AND OTHERS
VERSUS
RAMDAS BHANUDAS PUND AND ANOTHER**

...

Shri Jayabhar Dattatraya R., Advocate for the Petitioners.
Shri S.V.Natu, Advocate for Respondent No.1.
Shri S.K.Tambe, AGP for Respondent No.2/ State.

...

**WITH
WRIT PETITION NO.698 OF 2017**

**BABAN HANUMANTA SOMWANSHI.
-VERSUS-
WALMIK RAMBHAU TAMBE AND OTHERS.**

...

Shri R.A.Tambe, Advocate for the Petitioner.
Shri N.V.Gaware, Advocate for Respondent Nos.1 to 8.
Shri S.K.Tambe, AGP, for Respondent No.9/State.

...

**WITH
WRIT PETITION NO. 585 OF 2017**

**PARIGHABAI @ PRAYAGBAI RADHAKRUSHNA LAHARE AND OTHERS
VERSUS
PANDITRAO MURLIDHAR LAHARE AND OTHERS**

...

Shri C.K.Shinde, Advocate for the Petitioners.
Shri Sanket Kulkarni, Advocate for Respondent Nos.1 to 7, 9 to 17 and 19
to 23.
Shri S.K.Tambe, AGP for Respondents 25 and 26.

...

**WITH
WRIT PETITION NO. 4726 OF 2017**

DILIP KRISHNA PATIL AND OTHERS
VERSUS
SUB DIVISIONAL OFFICER, JALGAON AND OTHERS

...

Shri PR.Patil, Advocate for the Petitioners.
Shri S.N.Kendre, AGP for Respondents 1 and 2.
Shri L.V.Sangit, Advocate for Respondents 3 and 4.

...

WITH
WRIT PETITION NO. 11622 OF 2017

JAISINGH GOVINDS RAJPUT
VERSUS
SUB DIVISION OFFICER DHULE AND OTHERS

...

Shri Anjanwatikar Vinay B., Advocate for the Petitioner.
AGP for Respondents/ State : Shri S.K.Tambe.

...

CORAM: RAVINDRA V. GHUGE, J.

Reserved on :- 21st September, 2017.

Pronounced on : 13th October, 2017.

ORDER:

1 In all these Writ Petitions, various orders passed by the Sub Divisional Officer, Nagar Division, Ahmednagar have been challenged on the ground that the Sub Divisional Officer (SDO) would not have the authority and jurisdiction to deal with an RTS Revision under Section 23 (2) of the Mamlatdar's Courts Act, 1906 (for short "the MC Act").

2 The common grievance of all these Petitioners is that after the Tahasildar passes an order under Section 5(2) of the MC Act, an RTS

Revision would be maintainable only before the Additional Collector or Deputy Collector under Section 23(2) of the MC Act.

3 I have heard the learned Advocates for all the litigating sides in this group of petitions on the issue of whether, the SDO could have dealt with the RTS Revision Cases. Considering the order that I intend to pass, I am not required to advert to their submissions on the factual aspect of the "Rasta" or "Wahivaat".

4 It would be appropriate to reproduce the various provisions of the MC Act and the Maharashtra Land Revenue Code, 1966 (for short "The MLR Code") as under:-

(a) Sections 5 and 23 of the MC Act read as under:-

"5. *Power of Mamlatdar's Courts.*

(1) *Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be fixed by the State Government,—*

(a) to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon;

(b) to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes to

any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner:

Provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh to remove or cause to be removed any such impediment or, to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

- (2) *The said Court shall also, subject to the same provisions, have power within the said limits, where any impediment referred to in sub-section (1) is erected, or an attempt has been made to erect it, or, when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing or trees or crops or fisheries or in the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes or in the use of roads or customary ways thereto, to issue an injunction to the person erecting or who has attempted to erect such impediment, or causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from erecting or attempting to erect any such impediment or, from causing or attempting to cause any further such disturbance or obstruction.*
- (3) *No suit shall be entertained by a Mamlatdar's Court*

unless it is brought within six months from the date on which the cause of action arose.

- (4) *The cause of action shall be deemed to have arisen on the date on which the impediment to the natural flow of surface water or the dispossession, deprivation or determination, of tenancy or other right occurred, or which the impediment, disturbance or obstruction, or the attempted impediment or disturbance or obstruction, first commenced.*

Explanation.— The exercise by a joint owner of any right which he has over the joint property is not a dispossession, or disturbance of possession of the other joint owner or owners within the meaning of this section."

"23. *Bar of Appeal.*

- (1) *There shall be no appeal from any order passed by a Mamlatdar under this Act.*
- (2) *But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.*
- (2A) *The Collector may delegate the powers conferred on him by this section to any Assistant Collector, Deputy Collector or Assistant Commissioner subordinate to him];*
- (3) *Where the Collector, Assistant Collector, Deputy Collector or Assistant Commissioner takes any proceedings under this Act he shall be deemed to be a Court under this Act."*

(b) Sections 2(34), 7(3), 13(3), 13(4) and 247 of the MLR Code

read as under:-

"2(34). *"Sub Divisional Officer" means an Assistant or Deputy Collector who is placed in charge of one or more sub-*

divisions of a district;"

"7(3) Subject to the general orders of the State Government, the Collector may place any Assistant or Deputy Collector in charge of one or more sub-divisions of a district, or may himself retain charge thereof. Such Assistant or Deputy Collector may also be called a Sub Divisional Officer."

"13(3) The Additional Commissioner and the Assistant Commissioner, and the Additional Collector and the Additional Tahsildar shall each exercise within his jurisdiction or part thereof such powers and discharge such duties and functions of the Commissioner, the Collector or, as the case may be, the Tahsildar under the provisions of this Code or under any law for the time being in force, as the State Government may, by notification in the Official Gazette, direct in this behalf."

"13(4) The Sub-Divisional Officer shall subject to the provisions of Chapter XIII perform all the duties and functions and exercise all the powers conferred upon a Collector by this Code or any law for the time being in force, in relation to the sub-division in his charge :

Provided that, the Collector may whenever he may deem fit direct any such Sub-Divisional Officer not to perform certain duties or exercise certain powers and may reserve the same to himself or assign them to any Assistant or Deputy Collector subordinate to the Collector :

Provided further that, to such Assistant or Deputy Collector who is not placed in charge of a sub-division, the Collector shall, under the general orders of the State Government, assign as such particular duties and powers as he may from time to time deem fit."

"247. Appeal and appellate authorities.

(1) In the absence of any express provisions of the Code, or of any law for the time being in force to the

contrary, an appeal shall lie from any decision or order passed by a Revenue or Survey Officer specified in column I of the Schedule E under this Code or any other law for the time being in force to the officer specified in column 2 of that Schedule whether or not such decision or order may itself have been passed on appeal from the decision of order of the officer specified in column I of the said Schedule :

Provided that, in no case the number of appeals shall exceed two.

- (2) *When on account of promotion or change of designation an appeal against any decision or order lies under this section to the same officer who has passed the decision or order appealed against, the appeal shall lie to such other officer competent to decide the appeal to whom it may be transferred under the provisions of this Code."*

5 Identical submissions of the Petitioners can be summarized as under:-

- (a) The MC Act provides for the Mamlatdar to issue orders directing removal of any impediment as is provided under Section 5(1) of the MC Act.
- (b) Under Section 5(2), the Mamlatdar has the authority to issue an injunction against any person who has created an impediment or obstruction and which is a matter of grievance under Section 5.
- (c) Under Section 23, an appeal is barred against the order passed by the Mamlatdar under the MC Act.
- (d) Under Section 23(2), it is only the Collector who would have

revisional powers over the Mamlatdar's proceedings and can call for and examine the record of any suit or findings or orders passed in such a matter in order to assess whether, the order is illegal or improper and not inconsistent with the MC Act.

- (e) Under Section 23(2A), the Collector may delegate the powers conferred on him to any Assistant Collector, Deputy Collector or Assistant Commissioner subordinate to him.
- (f) Under Section 23(3), when the Collector delegates the power under this section, the Assistant Collector or Deputy Collector or Assistant Commissioner, after taking over any proceedings under this Act, shall be deemed to be the Court under the MC Act.
- (g) An SDO is not defined under the MC Act and as such, even if, in a given case, an SDO is an Additional Collector or a Deputy Collector, he cannot decide the revision proceedings under Section 23(2) since he is an SDO, notwithstanding the fact that he may actually be discharging duties or performing functions as an Additional Collector or Deputy Collector.
- (h) Any authority entertaining a revision under Section 23(2) shall necessarily and exclusively be an Additional Collector or a Deputy Collector after delegation of power and the moment

he is an SDO under the MLR Code, he would cease to be the Deputy Collector or Additional Collector under the MC Act.

6 Reliance is placed upon the following judgments of this Court:-

- (a) Jayant Vasant Dhole vs. Additional Commissioner and others, 2007(1) ALL MR 265 : 2007 (1) Mh.L.J. 850.
- (b) Bija Maroti Hatwar vs. Kisan Chirkut Padole and another, 2015 (1) Mh.L.J. 282.
- (c) Narayan Bhagwan Bholankar and others vs. Dattatraya Digambar Tayade and others, Writ Petition No.4609/2015 (Nagpur Bench) decided on 28.04.2016.

7 Shri Natu, learned Advocate appearing on behalf of some of the Respondents along with other learned Advocates in these Petitions, submits as under:-

- (a) The description of an Additional Collector or Deputy Collector as an SDO is restricted only to the MLR Code.
- (b) The MC Act does not specifically bar an Additional Collector or a Deputy Collector, who may be an SDO, from entertaining a revision under Section 23(2) of the MC Act.

- (c) The MC Act does not, in any manner whatsoever, prohibit an Additional Collector or Deputy Collector from entertaining such revision only because he is commonly known as an SDO under the MLR Code.
- (d) Section 2(34) of the MLR Code defines a Sub Divisional Officer to mean an Assistant Collector or a Deputy Collector who is placed in charge of more than one Sub Division of a district.
- (e) Section 7(3) of the MLR Code permits the State Government to issue general orders empowering the Collector to place any Assistant or Deputy Collector in charge of one or more Sub Divisions of a district. Such Assistant Collector or Deputy Collector would be termed as an SDO.
- (f) Under Section 13(4) of the MLR Code, the SDO is empowered, subject to the provisions of Chapter XIII of the MLR Code, to perform all the duties and functions and exercise all the powers conferred upon the Collector by the MLR Code or by any law, for the time being in force, in relation to the Sub Division which is under his charge.
- (g) The second proviso below Section 13(4) indicates that such Assistant or Deputy Collector, who is not placed in charge of a Sub Division, may be assigned such particular duties and

powers as the Collector may exercise after such powers are assigned to him under the general orders of the State Government.

- (h) Under Section 247 of the MLR Code, an appeal would lie from any decision or order passed by the Revenue or Survey Officer specified in column I of Schedule E under the MLR Code.
- (i) Under Section 247 Schedule E of the MLR Code, on an order passed by all officers in the Sub Division subordinate to the SDO, an appeal would lie before the SDO or Assistant or Deputy Collector as may be specified by the Collector in this behalf.

8 Shri Natu relies upon the following judgments:-

- (a) Keshav Dhondi Sinda vs. Jairam Gangaram Pawar, 1911 BCI (O) 120.
- (b) Vishnu Dadu Lokhande vs. Umabai, 1955 The Bombay Law Reporter Vol. LVII Page 816.
- (c) Chhanuben vs. Manubhai Prabhudas Acharya, AIR 1976 Gujrat 62.

9 The learned AGP on behalf of the State has relied upon the paragraph-wise remarks and instructions supplied to him by the Additional Collector, Ahmednagar under the instructions of the Collector, Ahmednagar, vide communication dated 20.09.2017. Based on the same, he has contended as under:-

- (a) Presently, in the State of Maharashtra, an SDO defined under Section 2(34) of the MLR Code is always an Assistant or Deputy Collector and not below the said rank.
- (b) In Ahmednagar district, to be specific, every SDO is a Deputy Collector.
- (c) Under Section 7(3) of the MLR Code, the Collector can place any Assistant Collector or Deputy Collector in charge of one or more Sub Divisions of a district.
- (d) In the State of Maharashtra, the Sub Divisional Officer is always the Deputy Collector or an Assistant Collector.
- (e) By an office order dated 31.07.1987, the SDO, on account of being the Assistant or Deputy Collector, has been specifically delegated the power under Section 23 under the MC Act.
- (f) For the last 30 years, only for the sake of assumption, not a single SDO who may not be an Assistant or Deputy Collector, has ever entertained an RTS Revision under Section 23(2) of the MC Act.

10 Shri Tambe, learned Advocate, has strenuously supported the stand that an SDO cannot entertain an RTS Revision under Section 23(2) of the MC Act though the Assistant or Deputy Collector may be working as an SDO under the MLR Code. He, however, hastens to add that if an Assistant or Deputy Collector is in charge of the Sub Division under the MLR Code and is entertaining an RTS revision under Section 23(2) of the MC Act, there may not be a grievance that the said authority entertaining the RTS Revision is not an Assistant Collector or Deputy Collector.

11 In the backdrop of the above submissions, it would be apposite to refer to the views taken by the learned Single Judges of this Court and relied upon by the Petitioners in the matters of Jayant Vasantrao Dhole (supra) (Coram : B.P.Dharmadhikari, J.), Bija Maroti Hatwar (supra) (Coram : Z.A.Haq, J.) and Narayan Bhagwan Bholankar (supra) (Coram : P.B.Varale, J.).

12 In Jayant Vasantrao Dhole (supra), it was held in paragraph 16 as under:-

"16. Thus, when Section 2(34) and Section 7(3) are read together, it is apparent that the Collector can place any Assistant or Deputy Collector as in-charge of one or more sub-divisions of a district and when such Assistant or Deputy Collector is so placed, he becomes a Sub-Divisional Officer. Section 7(3) also permits the Collector to retain charge of such sub-division. However, exercise of powers by the Collector

under Section 7(3) are subject to general orders of State Government. The position becomes more clear when Section 13 is read. Its Sub-section (4) with its both proviso read as under:

(4) The Sub-Divisional Officer shall subject to the provisions of Chapter XIII perform all the duties and functions and exercise all the powers conferred upon a Collector by this Code or any law for the time being in force, in relation to the sub-division in his charge :

Provided that, the Collector may whenever he may deem fit direct any such Sub-Divisional Officer not to perform certain duties or exercise certain powers and may reserve the same to himself or assign them to any Assistant or Deputy Collector subordinate to the Collector;

Provided further that, to such Assistant or Deputy Collector who is not placed in-charge of a sub-division, the Collector shall, under the general orders of the State Government, assign such particular duties and powers as he may from time to time deem fit.

The perusal of Sub-section (4), therefore, clearly reveals that the Sub-Divisional Officer performs and exercise all powers conferred upon the Collector by Maharashtra Land Revenue Code. If the Collector wants such Sub-Divisional Officer not to perform certain duties or not to exercise such powers, the Collector can reserve to himself those powers or assign them to any other Assistant or Deputy Collector subordinate to himself. It is, therefore, clear that as per first proviso to Sub-section (4), if the Collector wants Sub-Divisional Officer not to exercise particular duties or powers, the Collector has been authorised to reserve these powers either to himself or to any other Assistant or Deputy Collector subordinate to him. It is further apparent from the use of words "Sub-Divisional Officer" and words "Assistant or Deputy Collector" in this sub-section that Assistant or Deputy Collector subordinate to the Collector are the officers to whom certain duties or powers are assigned to be performed on his behalf but

they are not Sub-Divisional Officers. Second proviso to Sub-section (4) of Section 13 of the Code thereafter speaks of Assistant or Deputy Collector who are not placed in-charge of any sub-division and it enables Collector by General orders of the State Government to assign any particular duties or powers as he may deem fit from time to time to such Assistant or Deputy Collector. It is, therefore, again apparent that said Assistant or Deputy Collector to whom a Collector can assign duty under second proviso is not Sub-Divisional Officer. It is, therefore, clear that in view of substantive part of Sub-section (4), Sub-Divisional Officer has been authorised by the Code to act as Collector and it is not on account of delegation of powers by the Collector to Sub-Divisional Officer. There has to be therefore a direction or order in writing issued by Collector beforehand withdrawing certain powers and duties to himself under first proviso or to confer those powers or duties upon some other Assistant or Deputy Collector subordinate to him as per latter proviso. In this background, when Section 13(1) with its proviso is looked into, it is apparent that it contemplates Sub-Divisional Officer also.

The proviso part of Section 13(1) of the Code nowhere includes Sub-Divisional Officer because by Sub-section (4) of Section 13 of the Code, there is a special confirmation of power upon the Sub-Divisional Officer. The proviso to Section 13(1) again speaks of only Assistant or Deputy Collector and states that the Collector can also exercise throughout his district all powers and discharge all the duties and functions conferred or imposed on an Assistant or Deputy Collector under this Code or under any law for the time being in force. It is, therefore, clear that the officers contemplated by first proviso are Assistant or Deputy Collector and not Sub-Divisional Officer. If the Sub-Divisional Officer is read into this proviso, it would be creating inconsistent situation and the provisions of Sub-section (4) will then be directly in conflict with said proviso to Section 13(1). Such an interpretation therefore cannot be made and the

arguments of learned Counsel for respondents No. 5 and 6 that the Collector could have accordingly exercised the powers of Sub-Divisional Officer in the matter cannot be entertained."

13 It appears from the above observations that there was no submission made before the learned Single Judge that in the State of Maharashtra, it is only an Assistant or Deputy Collector who is designated as an SDO and every SDO necessarily has to be an Assistant or a Deputy Collector. So also, the issue as to whether, an SDO under the MLR Code, who otherwise for all purposes is an Assistant or Deputy Collector, could exercise powers under Section 23(2) of the MC Act as an Assistant or as a Deputy Collector and not as an SDO, was never raised before the learned Single Judge in *Jayant case (supra)*.

14 In *Bija Maroti Hatwar (supra)*, the issue before the learned Single Judge was that an SDO has no jurisdiction to entertain a revision under Section 23 of the MC Act and hence, every order passed on entertaining a revision by the SDO under Section 23, even under the delegated powers of the Collector, would be rendered untenable. While considering this submission, it is specifically observed in paragraphs 7, 8 and 9 as under:-

"7. *In view of the provisions of Section 23(2A) of the Mamlatdars' Courts Act, 1906 the Collector may delegate the powers conferred on him to any Assistant Collector, Deputy Collector or Assistant*

Commissioner subordinate to him. Therefore, the delegation cannot be in favour of the Sub-Divisional Officer. Moreover, nothing has been placed on the record to show that in fact there had been delegation of powers in favour of the Sub-Divisional Officer.

8. The submission made by the learned AGP relying on the provisions of Section 13(4) of the Maharashtra Land Revenue Code cannot be accepted. Section 13(4) of the Maharashtra Land Revenue Code reads as follows:-

“13(4) The Sub-Divisional Officer shall subject to the provisions of Chapter XIII perform all the duties and functions and exercise all the powers conferred upon a Collector by this Code or any law for the time being in force, in relation to the sub-division in his charge.....”

9. A bare reading of Section 13(4) of the Maharashtra Land Revenue Code shows that the Sub-Divisional Officer may subject to the provisions of Chapter XIII of the Maharashtra Land Revenue Code perform all the duties, functions and exercise all the powers conferred upon the Collector by the Maharashtra Land Revenue Code or any law for the time being in force in respect of the sub-divisions in his charge. It cannot be said that while exercising jurisdiction under Section 23(2) of the Mamlatdars' Courts Act, 1906 the Sub-Divisional Officer is exercising powers conferred on the Collector by the Maharashtra Land Revenue Code. The provisions of Section 13(4) of the Maharashtra Land Revenue Code further enables the Sub-Divisional Officer to perform all the duties and functions and exercise all the powers conferred upon the Collector by any other law for the time being in force. Reading of Section 23(2A) of the Mamlatdars' Courts Act, 1906 makes it clear that this provision does not authorize the Sub-Divisional Officer to exercise the powers conferred upon the Collector.”

(Emphasis is supplied by me).

15 It was thus, observed by the learned Judge that the delegation of power by the Collector under Section 23(2) of the MC Act cannot be made in favour of an SDO for the reason that "*nothing has been placed on the record to show that in fact there had been delegation of powers in favour of the SDO.*" In paragraph 9, it has been observed that "*It cannot be said that while exercising jurisdiction under Section 23(2) of the Mamlatdar's Courts Act, 1906, the Sub Divisional Officer is exercising powers conferred on the Collector by the Maharashtra Land Revenue Code.*"

16 It, therefore, becomes obvious that neither was it canvassed before the learned Single Judge in *Bija Hatwar (supra)* that, an SDO is infact and necessarily an Assistant or Deputy Collector and he would, therefore, be the Assistant or Deputy Collector under Section 23(2) and 23(2A), nor was the Office Order issued by the State dated 31.07.1987 (on the basis of which, the powers of the Collector under Section 23 were specifically delegated to the Sub Divisional Officer, Assistant or Deputy Collector), placed before the learned Single Judge. The State had not canvassed that an SDO is necessarily an Assistant or Deputy Collector who is in charge of the Sub Division comprising of more than one Taluka for the purposes of the MLR Code and the said SDO was functioning as an Assistant or Deputy Collector for the talukas covered by the Sub Division under Section 23 of the MC Act.

17 In Narayan Bhagwan Bholankar case (supra), the learned Single Judge relied upon Jayant Dhole (supra) and Bija Maroti Hatwar (supra) and concluded in paragraph 8 as under:-

"8. *The learned counsel for the petitioners was also justified in placing reliance on the judgment of this Court in Jayant Dhole vs. Additional Commissioner. Though, the learned counsel for the respondent no.1 made an attempt to submit that the Collector, Buldana by order dated 28.02.1961 had delegated the powers to the S.D.Os. of Buldana district, in view of the specific provisions of Section 23(2A) of the Act of 1906, I am unable to accept the submission of the learned counsel for the respondent no.1.*"

18 The learned Division Bench, in Keshav Dhondi Sinde (supra), (Coram : Beaman F.C.O. and Hayward, JJ), was dealing with the case wherein, the order of the Assistant Collector, Solapur revising the decree of the Mamlatdar's Court was challenged. The learned Division Bench formulated the principal point for decision in paragraph 2 as under:-

"2. *The principal point to which our attention has been invited is whether, an Assistant Collector, merely in virtue of being placed in revenue charge of certain portions of a District, is thereby empowered to exercise all the powers conferred upon the Collector of the District by Section 23 of the Mamlatdars Courts Act (Bombay Act II of 1906).*"

19 After considering the submissions of the parties, it was observed in paragraphs 3, 4, 5, 6 and 7 as under :-

- "3. On a first view, it would appear that an Assistant Collector could not be so authorized; but in opening his case Mr. Branson very candidly, and very rightly, I think, drew our attention, to Section 10 of the Land Revenue Code; and after having given that section our very best and most careful attention, with special reference to the arguments which Mr. Branson has used against its applicability here, we feel unable to escape from the force of the direct language used. If language is ever to mean anything, when it is perfectly plain and unambiguous, the language of this section, we think, must be taken in its natural sense. That section enacts that after certain conditions precedent have been fulfilled, an Assistant Collector thus placed in charge of portions of a District is empowered to exercise all the powers conferred upon the Collector by this Act or any other law at the time being in force within the local limits of that portion of the District, of which he has been placed in charge. It has been very strenuously contended that the words "or any other law at the time being in force" having regard to the general structure of the section and to its place in the Land Revenue Code, ought to be restricted to laws or Acts ejusdem generis: but we think that that would be stretching interpretation too far; and had we had any doubt of what Government intended when this Land Revenue Code was passed, (a Resolution, which of course is no binding authority upon us, but serves to throw useful light upon this question, cited in a footnote to Section 10 in Sathe's Edition of the Land Revenue Code), goes far to dispel that doubt.
4. We were referred in the course of the argument to an unreported decision of Jenkins C. J. and Batchelor J. upon what appears to have been a very similar point. There the Rule was made absolute, but no reasons were given. I have consulted my Brother Batchelor and he assures me that so far as his memory goes Section 10 was never referred to in that argument or brought to the notice of that Bench.
5. The recent case of *Somchand Bhikhabhai v. Chhaganlal Khubchand*, (1911) 13 Bom. L. R. 207,

decided by Scott C. J. and Batchelor J. under Section 11 of the Land Revenue Code, plainly turned upon a different point and is governed by quite different principles.

6. Here, we think, we must give its natural effect, to the language of Section 10 and hold that an Assistant Collector put in charge of any portion of a District is within that portion of the District clothed with all authority and powers of a Collector conferred by the Land Revenue Code or by any other law at the time being in force. The Mamlatdars Courts Act is such a law and it confers upon the Collector powers of revision, which within his territorial limits, the Assistant Collector was, we think, empowered to exercise. It cannot, therefore, be said that the order complained of was in law a nullity for this reason.
7. It was then contended that even if the Assistant Collector had power to revise the proceedings of the Mamlatdar's Court, he exceeded his jurisdiction by admitting fresh documentary evidence; and in that connection we have been referred to another decision of Scott C.J. and Rao J. in *Kashiram v. Rajaram*, (1911) 13 Bom. L. R. 879, in which those learned Judges have certainly held that the Collector who, while revising the Mamlatdar's decree admits evidence, thereby exceeds his jurisdiction, and that is a sufficient ground to warrant the interference of the High Court in the exercise of its superintending power. Doubtless this is a similar case; but the exercise of this extraordinary power, vested in the High Court, is always a matter of discretion; and having regard to the facts which have been stated here, particularly that litigation is actually in progress and may soon be expected to settle the matters in dispute between the parties we do not feel called upon now to interfere with the revisional order passed by the Assistant Collector. We do not think it necessary to do so to avert any material and otherwise irreparable injustice."

(Emphasis is supplied by me)

20 It was thus, concluded that the Assistant Collector put in charge of any portion of a district, is, within that portion of the district, upon delegation, clothed with all authority and powers of the Collector conferred by the MLR Code or by any other law at the time being in force. The Mamlatdar's Courts Act, 1906 is such a law and it confers upon the Collector such powers of revision, which within the said territorial limits, the Assistant or Deputy Collector was empowered to exercise on delegation.

21 In Vishnu Dadu Lokhande (supra), the learned Division Bench of this Court dealt with an appeal against an order passed by the Mamlatdar under Section 24(2) of the Bombay Tenancy and Agricultural Lands Act as to whether, the District Deputy Collector was competent to hear the appeal.

22 The observations of the learned Division Bench in Vishnu Lokhande (supra) with regard to the facts of the case are as under:-

"..... In the opinion of the learned Judge, an appeal against the order of the Mamltadar could only be entertained by the Collector of the District and it could not be heard by a District Deputy Collector. He observed:

"Under the provisions of the Tenancy Act, it is the Collector who is referred to as the Authority to whom an appeal from the decision of the Mamlatdar is to be filed. No notification delegating the powers of the Collector in that respect to the District Deputy Collector is pointed out. Hence in the absence of such notification, the District Deputy Collector cannot

prima facie be regarded to be entitled to entertain the appeal; and I find that there is a good deal of force in the argument that the order passed by the District Deputy Collector is *ultra vires*. Under the circumstances, the possession obtained by the plaintiff under the orders of the Mamlatdar cannot be regarded to be in any way wrongful."

The defendant has filed this second appeal against the decree passed by the learned District Judge. Mr. G.A. Desai, who appears on behalf of the defendant, has contended that the civil Court had no jurisdiction to entertain and decide the suit for a declaration that an order passed by the District Deputy Collector in an appeal properly filed under the Bombay Tenancy Act, 1939, awarding possession to the defendant was not liable to be enforced. Mr. Desai also contended that the appeal against the order of the Mamlatdar lay to the Deputy Collector and the Deputy Collector was competent to decide the appeal and the District Court was in error in holding that the order passed by the Deputy Collector was without jurisdiction.

Now, the proceedings were taken by Umabai in the Court of the Mamlatdar when the Bombay Tenancy Act, 1939, was in force, and notwithstanding the repeal of that Act by the Bombay Tenancy and Agricultural Lands Act, 1948, the proceedings commenced under the Bombay Tenancy Act, 1939, had to be heard and disposed of as if that Act had not been repealed. Under Section 24 of the Bombay Tenancy Act, 1939, a landlord was entitled to make an application to the Mamlatdar for obtaining possession of any land held by a tenant. On receipt of an application by a landlord for possession of any land held by a tenant, the Mamlatdar was required to hold an enquiry in the prescribed manner and to decide the case according to the rights of the parties. Against the decision of the Mamlatdar, Sub-section (3) of a, 24 provided an appeal to the Collector, and Sub-section (4) provided that, subject to the

provisions of Section 28, every order passed by the Mamlatdar under Sub-section (2), unless modified or revised by the Collector on appeal under Sub-section (3), and every order passed by the Collector under Sub-section (3), shall be final. The effect of that provision was to make the decision of the Mamlatdar, if not modified or reversed on appeal, and the decision of the Collector in appeal, final. In the present case, an application was filed by Umabai for possession of the land from her tenant and that application was governed by Section 24 of the Bombay Tenancy Act, 1939. The Mamlatdar decided the application in favour of Umabii. If the order had not been validly appealed from the order by Sub-section (4) of Section 24 would have become final. But an appeal was filed by the defendant against that order and in appeal the Deputy Collector reversed the order of the Mamlatdar and directed that Umabai do restore possession of the property which she had obtained under the order of the Mamlatdar. If the order of the Deputy Collector is passed in exercise of jurisdiction vested in him, that order must also be regarded as final and it is not open to the civil Court to decide the question whether that order was irregularly passed. The validity of that order can only be challenged on the sole ground of competence of the Mamlatdar or the Collector. Now, the learned District Judge, as I have stated earlier, held that an appeal from a decision under Section 24, Sub-section (2), of the Bombay Tenancy Act, 1939, can be entertained only by the Collector and not by the Deputy Collector. If that decision is correct, evidently the Deputy Collector had no jurisdiction to entertain and hear an appeal against the decision of the Mamlatdar and to reverse his decision."

(Emphasis is supplied by me)

23 The sole question was, therefore, as to whether, the District Deputy Collector could have heard an appeal against an order passed by

the Mamlatdar. The expression "Collector" as was not defined under the Bombay Tenancy Act, 1939, this Court turned to Section 8 under the Bombay Land Revenue Code and concluded that the State Government was authorized to appoint in each district an officer who would be the Collector to exercise the powers and discharge duties imposed on the Collector or Assistant Collector or Deputy Collector throughout the district.

24 The learned Division Bench has further observed as under:-

"..... By Section 8, the State Government is authorised to appoint in each District an officer who shall be the Collector and who may exercise, throughout his district, all the powers, and discharge all the duties conferred and imposed on a Collector or an Assistant or Deputy Collector by the Act, or by any other law for the time being in force, and in all matters not specially provided for by law shall act according to the instructions of the State Government. Section 9 of the Code enables the State Government to appoint in each district so many Assistant Collectors and Deputy Collectors as it may deem expedient and by the second paragraph of that section, all Assistant and Deputy Collectors in a district are made-subordinate to the Collector for the district. The combined effect of Sections 8 and 9 of the Bombay Land Revenue Code is that the State Government is authorised to appoint a Collector in every district and also to appoint as many Assistant or Deputy Collectors as it may deem expedient and that the Collector is entitled to exercise all the powers and to discharge all the duties which are imposed upon him by the Code and he is also entitled to exercise all the powers of the Assistant and the Deputy Collector conferred by the Code. It is further provided that the Collector is entitled to exercise all the powers and

discharge all the duties which are imposed upon him by any other law for the time being in force upon an Assistant or a Deputy Collector. Section 10 of the Bombay Land Revenue Code provides that:

"Subject to the general orders of the State Government, a Collector may place any of his assistants or deputies in charge of the revenue administration of one or more of the talukas in his district, or may himself retain charge thereof.

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of Chapter XIII, perform all the duties and exercise all the powers conferred upon a Collector by this Act or any other law at the time being in force, so far as regards the taluka or talukas in his charge."

There are two other paragraphs in Section 10 which are not material in the present appeal and need not be set out. Whereas Section 8 enables the Collector to perform the functions and discharge the duties of an Assistant or a Deputy Collector under the Bombay Land Revenue Code or any other law for the time being in force, Section 10 authorises an Assistant or a Deputy Collector, who has been put in charge of there venue administration of one or more talukas of the district, to perform all the duties and to exercise all the powers conferred upon a Collector by the Bombay Land Revenue Code or by any other law for the time being in force so far as regards the taluka or talukas in his charge. The effect of Section 10 is that, once an Assistant or a Deputy Collector is by an order of the Collector put in charge of revenue administration of one or more talukas in his district, by the operation of the second paragraph of Section 10, he is subject to territorial limitations statutorily invested with all the powers which are conferred upon the Collector by the Code or by any other law for the time being in force and is entitled to exercise the powers of a Collector under the Code or by any other law for the time being in force. The Bombay Tenancy Act, 1939, is undoubtedly 'any other law' in force within the meaning of Section 10. It is undisputed in

this case that the Deputy Collector, who decided the appeal filed by the defendant, was placed in charge of the Karad taluka and having been so placed in charge, he had, under the second paragraph of Section 10, jurisdiction to exercise the powers of the Collector to hear appeals under Section 24 of the Bombay Tenancy Act so far as regards the taluka in his charge."

(Emphasis is supplied by me).

25 Section 10 of the Bombay Land Revenue Code is almost identical to Section 7(3) of the MLR Code.

26 The learned Division Bench then referred to the Mamlatdar's Courts Act and observed as under:-

"..... Mr.Jahagirdar then referred us to in Sonu v. Arjun. That was a case under the Mamlatdars' Courts Act and the question which arose for decision was whether the expression 'Collector' as used in Section 23 of the Mamlatdars' Courts Act, 1906, included a Deputy Collector. A division bench consisting of Scott C.J. and Batchelor J. held that the Deputy Collector had no authority to pass any order under the Act purporting to exercise revisional jurisdiction under Section 23. In coming to that conclusion, the learned Judges held that a Collector, as denned in the General Clauses Act, was the chief officer in charge of the revenues administration of the district, and when, by the Mamlatdars' Courts Act of 1906, powers were conferred upon the Collector, an officer who had been put in charge of a part of the district could not exercise those powers. Reliance was sought to be placed in that case by the defendant upon the provisions of Section 10 of the Bombay Land Revenue Code, but it was opined that the expression 'any law for the time being in force' used in para. 2 of Section 10 must mean any law ejusdem generis with the Bombay Land Revenue Code and would not embrace

any special law relating to Mamlatdars' Courts such as is found in the Act of 1906. Their Lordships also observed that if a Deputy Collector could hear a revision application under Section 23 of the Mamlatdars' Courts Act, there would arise an un contemplated result that against the decision of the Deputy Collector, a further appeal would lie to the Collector and from the order of the Collector to the Commissioner under the Code, there being no express provision to the contrary under the Mamlatdars' Courts Act, 1906. With respect, it must be stated that in making that observation the learned Judges appear to have been in some error. The Bombay Land Revenue Code does not contemplate an appeal against the decision of a revenue officer exercising revisional jurisdiction and the assumption that the order of a Deputy Collector passed under Section 23 of the Mamlatdars' Courts Act could be appealed against to the Collector or the Commissioner does not seem to be warranted. Therefore, what the learned Judges characterized as the absurdity of the conclusion, and which was relied upon as an argument for supporting the view that a revision application did not lie to the Deputy Collector under Section 23, cannot be appreciated.

In this connection attention may also be directed to an earlier decision of this Court in *Keshav v. Jairam* (1911) 13 Bom. L.R. 1031 which dealt with the question whether an Assistant Collector can hear an application in revision under Section 23 of the Mamlatdars' Courts Act. That was also a decision of a division bench in which it was held that an Assistant Collector, who is put in revenue charge of any portion of a district, is empowered by Section 10 of the Bombay Land Revenue Code of 1879, to exercise all the powers conferred upon the Collector of the district by Section 23 of the Bombay Mamlatdars' Courts Act, 1906. In *Keshav's* case their Lordships referred to Section 10 of the Bombay Land Revenue Code and observed that it would be stretching the interpretation of the expression "or any other law at the time being in force" too far to hold that laws or

Acts ejusdem generis with the Bombay Land Revenue Code alone were intended to be covered thereby and not other Acts such as the Mamlatdars' Courts Act of 1906. There was, when Sonu v. Arjun was decided by the division bench consisting of Scott C.J. and Batchelor J., an earlier decision of a division bench of this Court precisely on the same point which arose in the latter case. It is true that, in the view of the bench in Sonu's case, certain arguments were not presented to the bench which decided Keshav v. Jairam. There being two conflicting decisions on the same point, it would be open to us to follow either of the two decisions which, in our view, is more consistent with the true interpretation of the Bombay Mamlatdars' Courts Act and the Bombay Land Revenue Code if a question which was decided by the two benches arose for decision at this date. But it must be mentioned that the question on which there was difference of opinion between the two benches has become academic because the Legislature has, by Act XXIV of 1942, amended the Mamlatdars' Courts Act and has added Sub-section (2A) to Section 23 which enables the Collector to delegate the powers conferred upon him by Section 23 to any Assistant or Deputy Collector subordinate to him. But in Keshav v. Jairam one division bench took the view that there was no justification for holding that the expression 'any other law at the time being in force' in Section 10 must be law ejusdem generis with the Bombay Land Revenue Code and another bench in Sonu v. Arjun held that the scheme of the Code indicated that the law at the time being in force must be law ejusdem generis with the law in the Bombay Land Revenue Code, In the view that we have expressed, we would be willing to accept the view expressed in Keshav v. Jairam. But, for the decision of the present case, it is unnecessary for us to decide the point. The Bombay Tenancy Act deals with matters some of which are also dealt with in the Bombay Land Revenue Code and even if for the application of Section 10, para. 2, of the Code, the test of a statute being ejusdem generis is to be applied, it cannot be stated that the Bombay Tenancy Act,

1939, is not ejusdem generis with the Bombay Land Revenue Code.

It must, therefore, be held that the Deputy Collector was competent to hear the appeal against the order of the Mamlatdar. Once it is held that the Deputy Collector was competent to hear and decide the appeal, the validity of the order passed by that officer cannot be challenged in a separate suit. On that view of the case, the appeal filed by the defendant will be allowed and the plaintiff's suit dismissed with costs throughout."

(Emphasis is supplied by me).

27 Considering the above, I am of the view that the SDO under the MLR Code can not be presumed to be an SDO under the MC Act since the MC Act does not prescribe or define any role for the SDO. The Assistant Collector or Deputy Collector upon delegation of authority, would be entitled to hear the RTS Revision under Section 23 since the Collector delegates his powers to the Deputy Collector or Assistant Collector under Section 23(2A) under the MC Act. He does not delegate his authority to the SDO under the MLR Code for the purposes of hearing the revision petitions under Section 23 of the MC Act. Once an Assistant or Deputy Collector becomes a Divisional Officer in charge of the subdivisions, thereby terming him to be an SDO, would not mean that he would no longer remain an Assistant or Deputy Collector. He would perform the role designed for him under the MLR Code as an SDO and while dealing with the matters under the MC Act, he would be discharging

his duties as an Assistant or Deputy Collector after receiving delegated powers from the Collector under Section 23(2A) of the MC Act.

28 Considering the above, I am of the view that the authority dealing with the RTS Revision under Section 23(2) of the MC Act is in fact the Assistant or Deputy Collector though he is routinely referred to as an SDO as the said nomenclature is used commonly by one and all in this State.

29 It needs mention that I have come to the above stated conclusions based on the judgments delivered by the learned Division Bench of this Court in Keshav Dhondi Sinde (supra) and Vishnu Dadu Lokhande (supra). These two judgments were never cited before the learned Single Judge of this Court in the matters of Bija Maroti Hatwar and Narayan Bhagwan Bholankar (supra). Similarly, there were no submissions before the learned Single Judge in these two cases that every SDO in the State of Maharashtra is an Assistant or Deputy Collector, for the purpose of the MLR Code and would continue to be the Assistant or Deputy Collector for the purpose of all other Acts, including the MC Act.

30 As such, place the Writ Petitions for hearing on 04.12.2017.

31 Interim relief granted earlier in any of these petitions, would continue till the next date of hearing in these matters.