

(1915) 04 BOM CK 0007

Bombay High Court

Case No: None

Sonu Janardan Kulkarni

APPELLANT

Vs

Arjun Walad Barku Kunbi

RESPONDENT

Date of Decision: April 9, 1915

Acts Referred:

- Bombay General Clauses Act, 1904 - Section 3
- Bombay Mamlatdars Courts Act, 1906 - Section 23

Citation: (1915) ILR (Bom) 552

Hon'ble Judges: Batchelor, J; Basil Scott, J

Bench: Division Bench

Judgement

Basil Scott, Kt., C.J.

This is a petition u/s 115 of the CPC by the plaintiff in the Mamlatdar's Court at Krandol in East Khandesh who sued for possession of certain lands under the Mamlatdars' Courts Act. The Mamlatdar of Erandol after recording evidence ordered possession to be given to the applicant. An application was then preferred purporting to be in revision u/s 23 of the Mamlatdars' Courts Act to the District Deputy Collector of East Khandesh who reversed the decision of the Mamlatdar of Erandol. The petitioner contends that the District Deputy Collector had no authority to act under the Mamlatdars' Courts Act. That Act is Bombay Act II of 1906. Section 23 provides: "There shall be no appeal from any order passed, by a Mamlatdar under this Act. 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."

2. Now unless the term "Collector" includes "District Deputy Collector" in that section, the District Deputy Collector has no authority to act under the Mamlatdars' Courts Act. The expression "Collector" is not defined in the Act itself, but it is defined

in the previous Bombay General Clauses Act (Bom. Act I of 1904), for the purpose of all Bombay Acts made after the 30th May 1904. Section 3 of that Act provides that: "In this Act, and in all Bombay Acts made after the commencement of this Act, unless there is anything repugnant in the subject or context, "Collector" shall mean, in the City of Bombay, the Collector of Bombay, and elsewhere the chief officer in charge of the revenue-administration of a District. "It is not contended that the District Deputy Collector is the chief officer in charge of the revenue-administration of the District of East Khandesh. But it is argued that by reason of certain powers having been delegated to the District Deputy Collector by the Collector u/s 10 of the Land Revenue Code, the District Deputy Collector is, therefore, a Collector within the meaning of Section 23 of the Mamlatdars' Courts Act of 1906. The Land Revenue Code, Section 10, provides that: "Subject to the general orders of 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." The powers of a Deputy Collector would, therefore, not extend beyond the Taluka or Talukas of the District which shall have been placed specially in his charge, and he could not be the chief revenue officer in charge of the revenue-administration of a District. Chapter XIII, to which reference is made in Section 10 provides that: "In the absence of any express provision of this Act, 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-officer under this Act or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not." If, therefore, the argument for the opponent is correct, and "any law for the time being in force," includes the Mamlatdars' Courts Act of 1906, an appeal would lie from the decision of the Deputy Collector u/s 23 to the Collector, and from the Collector to the Commissioner, because there is no express provision to the contrary in the Act. The absurdity of this conclusion suggests that the words "any law for the time being in force" must relate to any law ejusdem generis with the Land Revenue Code and would not embrace the special law relating to Mamlatdars' Courts such as we have in the Act of 1906.

3. We have, however, been referred to a decision of a Bench of this Court in *Keshav v. Jairam* (1911) 36 Bom. 123, in which it was held that by virtue of the Land Revenue Code, Section 10, an Assistant Collector in charge of portions of a District was entitled to exercise the revisional powers of the Collector u/s 23 of the Mamlatdars' Courts Act. It is apparent from the report that the provisions of the Bombay General Clauses Act of 1901 were not brought to the notice of the Court, particularly the words "unless there is anything repugnant in the subject or context" of the Act to be

construed, for Mr. Justice Beaman in his judgment states that, on a first view, it would appear that an Assistant Collector could not be authorised to exercise the revisional powers u/s 23. In view of the express definition in Section 3 of the General Clauses Act we feel bound to decide that the District Deputy Collector had no authority to pass any order under the Mamlatdars' Courts Act of 1900. He has, however, assumed, to act judicially, and is, therefore, according to the ruling in *The Collector of Thana v. Bhaskar Mahadev Sheth* (1884) 8 Bom. 264, to be treated as a Court under the superintendence of the High Court whose proceedings can be revised under the extraordinary jurisdiction. The question then is what order should be passed u/s 115. We declare that the order of the District Deputy Collector is a nullity as being without jurisdiction of any kind, and direct that the application of the defendant for revision under the Mamlatdars' Courts Act be taken on the file of the Collector, and be disposed of by him according to law. Having regard to the decision in *Keshav v. Jairam* (1911) 36 Bom. 123, we think that there should be no order as to costs of this application.