

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

WRIT PETITION NO. 8316 OF 2014

01. Vilas Bhagwantrao Bhosale,
Age: 56 years, Occu: Agri.
R/o Belwandi (bk) Tq. Shrigonda,
Dist. Ahmednagar.
02. Balu S/o Bhagwantrao Bhosale,
Age: 50 years, Occu.: Agri.
R/o Belwandi (Bk) Tq. Shrigonda,
Dist. Ahmednagar.
03. Sou Padmavati W/o Dattatraya Nimbalkar,
Age: 53 years, occu: Agri.,
R/o : Nandgaon, Tq. Karjat,
Dist. Ahmednagar.
04. Rajendra S/o Bapu Shendge,
Age: 27 years, Occup.: Agri.
05. Anil S/o Shankar Garudkar,
Age: 44 years, Occu.: Agri.,
06. Sunil S/o Muktaji Pawar,
Age: 34 years, Occu. Agri.
07. Nana S/o Bapu Ithape,
Age: 24 years, Occu. Agril.
08. Sanjay S/o Bapurao Dhekle,
Age: 42 years, Occup. Agri.
09. Dashrath S/o Bapu Shelar,
Age: 54 years, Occu.: Agri.

Respondents No. 4 to 9
R/o Belwandi (Bk) Tq. Shrigonda,
Dist. Ahmednagar.

...PETITIONERS
(ori. Opponents)

versus

01. The Hon'ble State Minister for
Revenue Maharashtra State, Mantralaya,
Mumbai - 32.

02. The Deputy Director of Land Records
Nasik, Dist. Nasik.
03. The District Superintendent of Land Records,
Ahmednagar, Dist. Ahmednagar.
04. The Village Panchayat Belwandi (bk)
Tq. Shrigonda, Dist. Ahmednagar,
Through its village sevak.
05. Smt. Parubai Shankar Kalgunde,
Age: 80 years, Occu.: Household,
06. Ishwat S/o Shankar Kalgunde,
Age: 52 years, Occu.: Agri.,
07. Sahebrao S/o Bhagwan Gore,
Age: 67 years, Occup. Agri.

Respondent Nos. 5 to 7
R/o Belwandi (bk) Tq. Shrigonda,
Dist. Ahmednagar.

...RESPONDENTS
(Respondent Nos. 5 to 7
Ori. appellants)

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Mr. N.V. Gaware, Advocate, holding for
Mr. G.D. Tanpure, Advocate for Petitioner
Mr. S.K. Tambe, A.G.P. for respondents No. 1 to 3.
Mr. RR. Karpe , Advocate for respondents No. 5 to 7
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 3rd July, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the parties finally, with consent.
2. After hearing learned counsel appearing for parties to some extent, particularly, a glaring fact of non service of notice of appellate proceedings on concerned respondents, to whom order in appeal affects, emerges.

3. The lacuna is apparent from affidavit-in-reply filed on behalf of respondents No. 2 and 3. It would be appropriate to reproduce, for ready reference, the contents of paragraphs No. 6 and 7 of said affidavit which read thus:

“6. I say and submit that, being aggrieved by the order dt. 17.10.2012 passed by the respondent No. 2 Dy. Director of Land Records, Nasik, the present respondent no. 5 to 7 preferred an Appeal before the Hon,ble Minister. I say that, the notice in the said appeal which was filed before Hon,ble Minister was received to tht Dy. Supdt. of Land Records, Shrigonda for service of the said notice on the present petitioners (respondent nos. 3 to 12 in the appeal before the Hon,ble Minister). I say that, in the said notice, it was mentioned that the hearing of the appeal was kept on 24.6.2014 before the Hon,ble Minister. I say that the said notice was served only on two persons namely Parubai Shankar Kalangute, (the appellant No.1 before the Hon,ble Minister in Appeal) and Babhulbai Pitale (the respondent no. 6 in Appeal before the Hon,ble Minister).

7. I say and submit that, the notice to other persons were not served because they were not found at their residence. I say that accordingly, the report was forwarded to the Hon'ble State Minister by the Dy. Superintendent of Land Record, Shrigonda. I say that, the hearing of the appeal was kept on 24..2014 before the Hon'ble Minister and since the present petitioners (respondents in the appeal before the Hon,ble Minister) were not present, the Hon, ble Minister was pleased to close the appeal for decision and accordingly, it is decided by the Hon,ble Minister on 27.8.2014. Hereto annexed and marked as Exh.R-3 Collectively is the copy of notice dt.17.6.2014 and copy of proceeding dt. 24.6.2014 along with decision of the Hon,ble Minister dt. 27.8.2014.”

4. Learned counsel for petitioners points out that respondent No. 6 who is only party served in appeal had already parted with his entire share in the property concerned and, as such, was not interested and the other parties to the appeal are having real concern and as such

there does not appear to be contest at all.

5. Mr. Gaware, learned counsel for petitioners has taken me through the record, substantiating reasons for non appearance in appeal. Learned counsel Mr. Karpe appearing for respondents though has reservations, he is not able to point out as to how it can be said that decision in appeal is by giving proper and adequate opportunity to the parties concerned.

6. Impugned order depicts, appellate authority was oblivious of non service of notice of appeal on petitioners. Taking into account aforesaid situation, I consider that the impugned order is defective as the principles of natural justice are not observed.

7. Having regard to such position, I do not think, any purpose would be served by dealing with present writ petition on merits, for, impugned order suffers infirmity of non- observance of principles of natural justice.

8. In view of aforesaid, impugned order stands set aside and appeal stands restored to its position as has been subsisting before passing of impugned order in order to enable the petitioners to have opportunity of being heard. Since all the parties are appearing before this court and to curtail the period of giving notice to the parties, I direct the parties to this petition to appear before appellate authority on 27th July, 2015. Thereafter, parties shall abide by the schedule as may be fixed by appellate authority. It should not be deemed that this order has been passed on the merits of the case and the appellate

authority shall not get influenced by observations in this order.

9. Rule is made absolute in above terms. Writ petition stands disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK