

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2868 OF 2014

Bhausahab Dnyndeo Thorat
(Dead L.Rs. Brought on record)

1A. Shukleshwar s/o Bhausahab Thorat,
Age: 55 years, Occ: Agri.,

2. Balasaheb s/o Bhausahab Thorat,
Age: 42 years, Occ: Agri.,

Both R/o. Ukkalgaon, Taluka
Shrirampur, Dist. Ahmednagar. ..Petitioners.

V/s.

1. The State of Maharashtra,
Through its Principal Secretary
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The Additional Collector,
Ahmednagar, District .Ahmednagar.
3. The Deputy Collector,
(Land Acquisition) No.13,
Ahmednagar, District Ahmednagar.
4. The Deputy Collector,
(Land Acquisition) No.14,
Ahmednagar, District Ahmednagar.
5. Bansibhau Gopinath Thorat,
Age: 72 years, Occ: Agri.,

6. Popat Gopinath Thorat,
Age: 70 years, Occ: Agri.,

7. Laxman Gopinath Thorat,
Age: 68 years, Occ: Agri.,

Respondent Nos. 4,5, 6 R/o.
Ukalgaon, Taluka Shrirampur,
Dist. Ahmednagar.

8. Raosaheb Parasram Bhingarde,
Age: 71 years, Occ: Agri.,
R/o. Digras, Taluka Rahuri,
District Ahmednagar.

9. Annasaheb Parasram Bhingarde,
Age: 69 years, Occ: Agri.,
R/o. Digras, Taluka Rahuri,
District Ahmednagar.

10. Kusum Vasantrao Teke,
Age: 75 years, Occ: Household,
R/o. Kanhegason-Wari, Taluka
Kopargaon, District Ahmednagar.

11. Suman Dinkar Pangavhane
(deceased through her L.Rs.)

11A. Rajendra s/o Dinkarrao Pangavhane,
Age: 55 years, Occ: Agri.,

11B. Bhaskar s/o Dinkarrao Pangavhane,
Age: 53 years, Occ: Agri.,

11C. Dnyaneshwar Dinkar Pangavhane,
Age: 48 years, Occ: Agri.,

Nos. 11A to 11C R/o. Ugaon,
Taluka Niphad, District Nashik.

12. Mirabai Pandurang Zine,
Age: 55 years, Occ: Household,
R/o. Birobanagar, Taluka Rahuri,
District Ahmednagar. ..Respondents.

Mr R.A. Tambe, Advocate for petitioners.

Mr A.P. Basarkar, A.G.P. for respondent Nos.1 to 4.

Mr C.K. Shinde, Advocate for respondent Nos.5 to 7.

Mr Deelip Bankar Patil, Advocate for respondent No.8.

CORAM: NITIN W.SAMBRE, J.

DATE : SEPTEMBER 4, 2017

ORAL ORDER

One Shankar Hari Thorat had widow by name Bhamabai and daughter Ababai. Shankar Hari Thorat died on February 2, 1968. Daughter Ababai was married prior to 1952.

2. Gopinath Dnyandev Thorat and Bhausaheb Dnyandev Thorat claim that there was Hindu Joint Family and Mutation Entry No.4381 came to be recorded in the name of Bhausaheb as Karta and Manager of the joint family in regard to land Survey No.264 at village Ukkalgaon, District Ahmednagar. The other legal

heirs of Shankar Hari are also entered into the revenue record in regard to the suit property. The agricultural land bearing Survey No.86 admeasuring 16 acres and 16 gunthas at Mouze Khandala, Taluka Srirampur, District Ahmednagar and Survey No. 264/1 admeasuring 1 hector and 49 Aar at village Ukkalgaon are claimed to be the joint family property.

3. Deceased Shankar claimed to have leased out land Survey No.86 to Maharashtra Sugar Mill, Ukkalgaon for sugarcane cultivation in addition to Survey No.264/1. As such, he was drawing certain rents during his lifetime.

4. After the Ceiling Act of 1961 (for short 'the Act'), the holding of sugarcane mills was declared surplus. Land Survey Nos.86 and 264/1 which was in the management of the said sugar factory was allotted to State Farming Corporation. Since the State Farming Corporation suffered losses, it was decided to restore the land to the land owner and as such, section 28-1AA was incorporated in the Ceiling Act of 1961.

5. Pursuant to the aforesaid provisions, the petitioners

and the respondents had lodged their claims and the same has given rise to passing of the impugned order by respondent No.2 Additional Collector, Ahmednagar which is claimed to be adverse to the interest of the petitioners who claim to be the nephews of deceased Hari.

6. Vide the impugned order dated February 1, 2013 respondent No.2 has ordered that the claim of all legal heirs was not taken into account while distributing the land referred supra and directed four names i.e. respondents to be incorporated as the legal heirs and to carry out the distribution of the land. As such, this petition.

7. The learned counsel for the petitioners, Mr.Tambe would raise two substantial objections to the order impugned :

a) Respondent No.2 before passing the order impugned has neither put the petitioners to notice nor they were called for hearing, as the order impugned is adverse to their interest i.e. their holding / entitlement will be reduced;

b) Respondent No.2 lacks jurisdiction to pass the order impugned as the relevant scheme framed pursuant to the provisions of section 28-1AA of the Ceiling Act does not confer such powers i.e. to decide the status of legal heirs. The order is contrary to the guidelines particularly 2.3 dealing with the issue raised.

8. *Per contra*, the learned AGP supports the order and would urge that the order impugned is in accordance with the scheme framed pursuant to the provisions of section 28-1AA of the Ceiling Act and no notice is contemplated to the petitioners.

9. The learned counsel for respondent Nos.5 to 7 and respondent No.8 would urge that since the order impugned is the outcome of Writ Petition No.7568 of 2013, the petitioners could not claim any right *qua* the order impugned as the petitioners will be getting their share in the property.

10. Considered rival submissions.

11. The first contention raised by the petitioners about non

issuance of notice before passing the impugned order without hearing the petitioners appears to be of some substance. From the available record, it appears that respondent No.2 in a hasty manner proceeded to pass the impugned order without being aware of his powers under the Ceiling Act of 1961 or under the scheme of distribution of the land framed thereunder. Rather, respondent No.2 was swayed away with the fact that Writ Petition No.7568 of 2013 initiated by the persons whose names were directed to be added, are legal representatives of deceased Hari, as could be derived from geneology of said deceased Hari. Apart from above, whether any inquiry *qua* the said fact was held, cannot be inferred from the tenor of the impugned order. Upon perusal of the impugned order, what is noticed is, the petitioners were never put to notice nor they were heard and no reasons in support of the impugned order are reflected therein. Apart from above, the issue of jurisdiction which is sought to be canvassed here, can be looked into by respondent No.2.

12. That being so, this Court is of the view that the impugned order is not sustainable and is liable to be quashed and

set aside. As such, writ petition stands allowed in terms of prayer clause B which reads thus :-

“ Quash and set aside the order dated 1-2-2013 (No.10A/3624/2013) passed by the Additional Collector, Ahmednagar, annexed at Exh.I and for that purpose issue necessary orders. ”

13. Respondent No.2 before whom the proceeding stands restored shall decide the issue afresh by himself or through any other competent officer, the issue including regarding jurisdiction to deal with the issue *qua* addition of the legal heirs of deceased Hari for distribution of land in question.

(NITIN W.SAMBRE, J.)