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

WRIT PETITION NO. 5695 OF 2016

1. Gazimiya s/o Nawab Kazi,
Age: 63 years, Occ: Agri.,
R/o. Kazi Lane, Shevgaon,
Taluka Shevgaon, Dist. Ahmednagar.
2. Ajaj s/o Nawab Kazi,
Age: 45 years, Occ: Agri.,
R/o. Kazi Lane, Taluka Shevgaon,
Dist. Ahmednagar. ..PETITIONERS

VERSUS

1. The State of Maharashtra
2. The Sub Divisional Officer/
Competent Authority, Under the
Maharashtra Agriculture
(Ceiling on Holdings) Act, 1961
Shrirampur Division, Shrirampur,
Dist. Ahmednagar.
3. Shehnaz w/o Hashmoddin Kazi,
Age: Major, Occ: Agri.,
R/o. Kazi Lane, Shevgaon,
Taluka Shevgaon,
Dist. Ahmednagar. ..RESPONDENTS

Mr Shaikh Mzhar A. Jahagirdar, Advocate for
petitioners;

Mr A.P. Basarkar, A.G.P. for respondent Nos.2 & 3

CORAM : NITIN W. SAMBRE, J.

DATE : 12th OCTOBER, 2017

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ORAL ORDER :

Heard Mr. Jahagirdar, learned Counsel for the petitioners.

2. Though respondent No.3 served, none appears on behalf of him.

3. This Court, while deciding Writ Petition No.1922 of 2015, on 30th November, 2015 observed thus :

"1. Petitioners are objecting to the order passed by the Sub Divisional Officer, Shrirampur, on 29.12.2014, thereby disposing of their claim in respect of return of land acquired for the purpose of Maharashtra Sugar Mills, Tilaknagar. Petitioners claim that while disposing of claim, the concerned authority has overlooked the provisions of Mohameddan Law as well as directives issued by the State Government under the provisions of Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961, more particularly, Chapter III, paragraph 7 thereunder.

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2. It would be open for the petitioners to tender a detailed representation/claim with the Sub Divisional Officer, Shrirampur, within a period of four weeks from today. On receipt of the claim, the Sub Divisional Officer, Shrirampur, after extending an opportunity of hearing to petitioners and all the interested parties, if any, shall proceed to re-determine the claim, as expeditiously as possible, preferably within a period of three months from the date of receipt of the claim. Order dated 29.12.2014 passed by the Sub Divisional Officer, impugned in this petition, shall not be an impediment in re-determination of the claim."

4. Mr. Jahagirdar, learned Counsel for the petitioners would invite attention of this Court to the guidelines issued by the State Government in the matter of lowering ceiling of agricultural land, particularly in regard to the allotment of lands in favour of parties, who are Muslim by religion and are governed thereby. According to him, it was expected of the authority i.e. Sub

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Divisional Officer to pass order, having regard to the relevant provisions of Mohammedan Law and also above referred provisions and guidelines issued by the State Government in lowering of ceiling of agricultural land.

5. He would then urge that in stead of consideration of determination of share and entitlement for allotment under the provisions of Muslim Law being L.Rs. Of original leaseholder, the authority straightway proceeded to jump to the conclusion that there is only one legal heir namely Shahanaz Hashomoddin Kazi and awarded share to her with recording any reasons as to why and how the petitioners are not entitled for allotment.

6. Learned A.G.P. opposed the claim on the ground that the order is passed by the authority in the backdrop of provisions of Muslim Law and also provisions of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

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7. Having considered the rival submissions, it is noticed that the authority below has jumped to the conclusion that the petitioners are not entitled for share in the property of Khairunissa Munshimiya Jahagirdar without recording any reasons as to how and under which of the provisions of Muslim Law, they cannot be considered as legal heirs of Khairunissa Munshimiya Jahagirdar, when the said claim is not contested before this Court by the respondent No.3.

8. Apart from above, the authority has also lost sight of the fact of the guidelines referred supra.

9. As such, it has to be inferred that the order impugned lacks consideration qua entitlement of share in the property in question to the petitioners. As such, impugned order is quashed and set aside. The matter stood restored to the file of Sub Divisional Officer, Shrirampur Division, Shrirampur, District Ahmednagar, before

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whom, the petitioners undertakes to appear on 30th October, 2017 with written submissions demonstrating how the petitioners in law are entitled for share in allotment of land. The Sub Divisional Officer, Shrirampur Division, Shrirampur, District Ahmednagar shall decide the claim afresh having regard to the observations made herein above.

10. The petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)

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