

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3046 of 2014

Uttareshwar Limba Sutar
Since deceased,
Through legal heirs:

- 1/1) Somnath Uttareshwar Sutar,
Age: 65 years, occ: agri,
R/o. Kasbe tadwale,
Tal. and Dist : Osmanabad.
- 1/2) Kashibai w/o. Bhimrao Panchal,
Age: 63 years, occ: household,
R/o. Latur,
Tal. and Dist: Latur.
- 1/3) Mahananda w/o Mahdukar Raut,
Age: 61 years, occ: household,
r/o. Barshi, Tal: Barshi,
Dist: Latur.
- 1/4) Mangal w/o. Baliram Sutar,
Age: 59 years, occ: household,
r/o. Pakhar Sangavi,
Tal. and Dist: Latur.
- 1/5) Indu w/o Navnath Panchal,
Age: 57 years, occ: household,
R/o. Aurangabad.
Tal. and Dist: Aurangabad.
- 1/6) Anil s/o. Uttareshwar Sutar,
Age: 55 years, occ: agril,
R/o. Kasbe Tadwale,
Tal. and Dist: Osmanabad.
- 1/7) Rukmin w/o. Uttareshwar Sutar,
Age: 52 years, occ: household,
R/o. Kasbe Tadwale,
Tal. and Dist: Osmanabad.

...Petitioners

Versus

1. Krushna Uddhav Jamale,
Since deceased,
through legal heirs:
 - 1/1 Smt. Satyabhama widow of Krushna Jamale,
Age: 80 years, occ: household,
R/o Kasbe Tadvale,
Tal. and dist: osmanabad.
 - 1/2) Jagannath Krushna Jamale,
Age: 60 years, occ: agri,
R/o. Kasbe Tadvale,
Tal. and Dist : Osmanabad.
 - 1/3) Arun Krushna Jamale,,
Age: 50 years, occ: agri,
R/o. Kasbe Tadvale,
Tal. and Dist : Osmanabad.
 - 1/4) Navnath Krushna Jamale,
Age: 47 years, occ: agri,
R/o. Kasbe Tadvale,
Tal. and Dist : Osmanabad.
 - 1/5) Chandraprakash Krushna Jamale,
Age: 45 years, occ: agri,
R/o. Kasbe Tadvale,
Tal. and Dist : Osmanabad.
 - 1/6) Sow. Sushila w/o. Shahaji Ghogare
Age: 56 years, occ: household,
R/o. Osmanabad,
Tal. and Dist : Osmanabad.
 - 1/7) Sow. Usha w/o. Sadanand Suryawanshi,
Age: 54 years, occ: household,
R/o. S.T. Colony, Barshi Naka,
Tal. and Dist : Osmanabad.
 - 1/8) Nirmala w/o. Ramesh Ghogare,
Age: 52 years, occ: household,
r/o. Anandnagar, Osmanabad,
Tal and Dist: Osmanabad.

- 1/9) Wanmala w/o. Dnyaneshwar Bhosale,
Age: 50 years, occ: household,
R/o. Bank Colony, Osmanabad,
Tal. and Dist : Osmanabad.
- 2) Vitthal s/o. Dhondiba Londhe,
Age: 40 years, occ: service,
R/o. Kasbe Tadvale,
Tal. and Dist : Osmanabad.
- 3) Laxman Limba Sutar,
Age: 42 years, occ: agri,
R/o. Kasbe Tadvale,
Tal. and Dist : Osmanabad. ...Respondents

Mr. Ameya N. Sabnis, Advocate h/f Mr. V.D. Gunale, Advocate for petitioners

Mr. S. B. Ghute, Advocate for respondents no. 1 and 2

CORAM : SUNIL P. DESHMUKH, J.

DATE : 15th December, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally by consent.

2. Petitioners are before this court, aggrieved by orders passed by Presiding Officer, Maharashtra Revenue Tribunal ("Tribunal"), Aurangabad Bench, dated 17-02-2012 upon applications dated 18-08-2011, *inter alia*, one for correction of title clause of restoration application and the other for bringing legal representatives of deceased respondent no. 1 on record

and for condonation of delay in the same, copies of which are annexed at pages no. 60, 70 to 73 and 74 in the paper-book of writ petition.

3. Heard learned counsel for appearing parties extensively. The genesis of proceedings before the Tribunal appears to lie in reference of tenancy issue to Tenancy Authority, arising in civil proceedings bearing regular civil suit no. 463 of 1985 in the court of Civil Judge, Senior Division, Osmanabad wherein Uttareshwar Limba Sutar - predecessor of present petitioners no.1/1 to 1/7 appears to be the plaintiff, and Krushna Uddhav Jamale - predecessor of present respondents no. 1/8 to 1/9 and present respondent no. 2 Vitthal s/o Dhondiba Londhe appear to be the defendants.

4. While it appears that tahsildar-the authority of first instance in tenancy proceedings had decided the referred issue in favour of Krushna (deceased respondent no.1) and respondent no. 2 herein under judgment and order dated 06-06-1995 and the appeal therefrom at the instance of predecessor of present petitioners having failed before the authority of second instance-Deputy Collector, Osmanabad on 30-11-1996, the matter had been taken up before the revisional authority- the

Tribunal under revision bearing No. 9B/97/0/TNC under the provisions of Hyderabad Tenancy and Agricultural Lands Act, 1950 by predecessor of present petitioners, namely, Uttareshwar against predecessor of present respondents no. 1/1 to 1/9, namely, Krushna and respondents no. 2 and 3 herein.

5. In the first round, notices of revision to respondents had not been responded to and the Tribunal had heard the matter and had closed the matter for orders and thereafter had delivered the judgment and order on 27-12-2000, allowing the revision bearing no. 9B/97/0/TNC, setting aside the orders of Tahsildar and Deputy Collector dated 06-06-1995 and 30-11-1996 respectively, and declaring Krushna - respondent no. 1 in said revision being not tenant over suit land.

6. After sometime, Krushna- predecessor of respondent no. 1/1 to 1/9 and respondent no. 2 purported to file application seeking restoration of revision petition. Their said restoration application had been allowed under order dated 22-01-2002 setting aside the order dated 27-12-2000, observing that advocate of present petitioners (respondents in restoration application) had gracefully acceded to request for restoration, giving no objection.

7. It appears, in the interregnum, original revision applicant Uttareshwar Limba Sutar had died on 21-05-2001 and it appears that an order came to be passed by the Tribunal on 20-03-2002 dismissing revision application bearing no. 9/B/1997/0/TNC as abated in the absence of appearance on behalf of revision applicant Uttareshwar for want of bringing his legal representatives on record, upon an application which was already filed by respondents therein producing thereunder death certificate of Uttareshwar as can be gathered from Exhibit - C at page 38 of writ petition paper-book.

8. An application came to be filed on 02-04-2002 by present petitioners no.1/1 to 1/7 for bringing themselves on record by condoning delay in making said application as Uttareshwar had died on 21-05-2001. Simultaneously, it appears, miscellaneous application had been filed by them seeking recall /setting aside of order dated 20-03-2002 referred to hereinbefore. It appears, on 13-06-2002, an order came to be passed dropping the proceedings for want of proper presentation and lack of prosecution, observing absence on behalf of original revision applicant and that earlier proceedings having been abated and steps for setting aside abatement having been taken after period

of limitation and with such infirmities the proceedings could not be justifiably continued.

9. Thereafter, it appears, another miscellaneous application had been moved in or about June, 2002 for setting aside order dated 13-06-2002 under which proceedings were dropped and seeking restoration of the proceedings to file as can be gathered from Exhibit G annexed to writ petition at page 49 in its paper-book. Said application, however, appears to have been filed erroneously, keeping the title clause as in the original revision application intact, i.e. in the name of Uttareshwar, overlooking the applications filed on 02-04-2002.

10. It appears that aforesaid proceedings were pending and in the interregnum, Krushna Uddhav Jamale - original respondent no. 1 in the revision application had expired in 2007 and the fact of the death for the first time came to be noticed by legal representatives of deceased Uttareshwar while learned counsel for respondent no. 1 had pointed out the same on 28-07-2011 and thereafter the counsel of the petitioners had communicated the same to them and, as such, application for bringing legal heirs of deceased respondent no. 1 had been moved on 18-08-2011 before the Tribunal, along with application for correction of title clause of the restoration application filed

against order dated 13-06-2002. Writ petition paperbook shows three orders to have been passed on 17-02-2002, one appearing at page 60 under the caption,

" ORDER BELOW THE APPLICATION DT. 18/8/2001 FOR BRINGING ON RECORD THE LEGAL REPRESENTATIVES OF DECEASED RESPONDENT NO. 1. "

another at page 70 under caption,

" ORDER BELOW THE APPLICATION DT.18-8-2011 FOR CORRECTION IN THE TITLE CLAUSE OF RESTORATION APPLICATION. "

and third at page 74 under caption,

" ORDER BELOW THE APPLICATION DT.18/8/2011 FOR SUBSTITUTION OF THE LEGAL REPRESENTATIVES OF DECEASED RESPONDENT NO.1 & FOR CONDONATION OF DELAY IN CASE NO.6-D-2002-Obad. "

11. It appears that it has been considered by the Tribunal that while original revision applicant Uttareshwar had died on 21-05-2001, an application for setting aside abatement and restoration of proceedings had been made on 27-06-2002 in the name of deceased original revision applicant and such defect could have been noticed by petitioners earlier. It has further been considered that *pursis* intimating death of respondent no. 1 having taken place in 2007 had been filed on 01-10-2010 whereas the corrective action in respect of the same had been

taken quite belatedly. As such, there were few occasions wherein the defects in the restoration application could have been noticed and while in December, 2010 *pursis* in respect of death of respondent no. 1 in 2007 had been filed, the Advocate for the petitioners could have intimated about the same immediately and thus there is gross negligence in making proper applications.

12. Learned counsel for the petitioners submits that the reasons underlying the applications are genuine and that by deliberately causing delay, the petitioners were unlikely to get any benefit or advantage. Despite explanation that due to inadvertence the mistake occurring in title clause of restoration application had not been realized earlier and no sooner it was realized, than an application for correction in the same had been moved. He submits that the proceedings were pending since 2002, without much movement and it appears under the circumstance the *pursis* about death of respondent no. 1 had been missed out on by the advocate and, as such, had not been known to petitioners earlier. Further, immediately on intimation about death of respondent no. 1, an application for bringing his legal heirs on record had also been moved, however, despite genuine circumstances as explained, the Tribunal has rather cursorily dealt with the same without looking into the factual

position. He submits that no deliberate intention can be imputed in respect of delay. On the contrary, the facts and circumstances may depict that causing delay was not at all in the interest of the petitioners. He, therefore, urges this court to take proper and lenient view in the matter and allow writ petition and set aside impugned order.

13. On the other hand, learned counsel Mr. Ghute appearing on behalf of respondents submits that petitioners have been conducting the matter negligently all along. He submits there is no plausible explanation for inaction to act upon pursis of death of respondent no. 1. They had not been diligent and had been moving carelessly in the matter and that is writ large from the proceedings as observed in impugned order.

14. Although it is being so argued on behalf of respondents, it does not appear that the argument would affect factual position that application had been moved on behalf of present petitioners for bringing themselves on record in revision as legal representatives of deceased Uttareshwar in April 2002 and in the meanwhile, proceedings were dismissed for want of appearance on behalf of petitioners under order dated 13-06-2002. An immediate action for restoration of the same had been taken in June, 2002 itself, albeit erroneously in the name of deceased

predecessor of petitioners who, in fact, had died in 2001 and while the mistake came to be realized during hearing in 2011, the same was sought to be explained, upon realization of events. It appears that proceedings for restoration and setting aside order had been pending for a long time from middle of 2002. Eventually, even after pursis about death of respondent no. 1, had been filed only in 2010 long after it taken place in 2007, the matter had lingered on subsequently till 2011, when it had been realised that corrective actions will have to be moved in the matter. Submission on behalf of petitioners is that they had not been aware of, pursis having been filed in 2010, till their advocate intimated about the same around 2011 and about action to be taken in respect of the same. Petitioners cause is involved in the matter. In the circumstances, causing deliberate delay in the matter would not be conducive to their interest. As such, submissions on behalf of petitioners would have to be given due credence.

15. In view of the same, a stickler 's approach in the face of expediency in the proceedings would better be eschewed. Having regard to factual aspect that already an application had been moved by petitioners for bringing them on record in place

of their deceased predecessor in the revision, and the fact of death of respondent no. 1 having been brought to their notice around 2010-11 and application for bringing heirs of deceased respondent no.1 on record in his place being made in August, 2011 soon after being made known about requirement of bringing legal representatives on record and also corrective action was also taken substituting name of deceased predecessor by those of petitioners, it does not appear that actions of the petitioners are improper and/or malafide, having regard to purpose underlying the proceedings for which those were initiated. It would thus be proper to set aside impugned order and allow the application and mend the inconvenience caused to other side by awarding costs.

16. For all aforesaid reasons, rejection of application for bringing legal heirs of deceased respondent no. 1 on record is also considered on the same lines.

17. As such, all the orders passed on 17-2-2012 on the applications in revision petition no. 9/B/97/O/TNC are quashed and set aside. All the applications which purportedly rejected on 17-02-2012, stand allowed, however, subject to payment of costs of Rs.15,000/- by petitioners to respondents. Costs be paid to respondents within a period of six weeks from the date

of receipt of writ of this order by the Tribunal. The proceedings before the tribunal be proceeded with expeditiously.

18. Writ petition as such is allowed in aforesaid terms and disposed of.

19. Rule made absolute accordingly.

SUNIL P. DESHMUKH
JUDGE

pnd/-