

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

Writ Petition No. 10753 of 2017

District : Ahmednagar

Shankar Hiraji Darade
(since deceased through
legal heirs)

1. Chandrabhaga Shankar Darade,
Age : 65 years,
Occupation : Household,
R/o. village Hanuman Takali,
Taluka Pathardi,
District Ahmednagar,
Presently R/o. Vanjarwadi,
Taluka Nevasa,
District Ahmednagar.
2. Bhausahab Shankar Darade,
Age : 47 years,
Occupation : Agriculture,
R/o. as above.
3. Annasaheb Shankar Darade,
Age : 45 years,
Occupation : Agriculture,
R/o. as above.
4. Vashali @ Bhamabai Vittal
Darade,
Age : 40 years,
Occupation : Agriculture,
R/o. Ganeshwadi,
Taluka Nevasa,
District Ahmednagar.
5. Suman Arun Avhad,
Age : 35 years,
Occupation : Agriculture,
R/o. Sandeshnagar,
Taluka & Dist. Ahmednagar.

.. Petitioners.

versus

1. The State of Maharashtra,
Through
the Addl. Divisional Commissioner,
Nashik Division, Nashik.

2. Narayan Tukaram Dagadkhair,
Age : Major,
Occupation : Agriculture,
R/o. village Hanuman Takali,
Taluka Pathardi,
District Ahmednagar.

.. Respondents.

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Mr. Shrimant Mundhe, Advocate, for petitioners.

*Mr. S.P. Sonpawale, Asst. Government Pleader, for
respondent no.01.*

*Mr. M.S. Karad, Advocate, holding for
Mr. Kakade, Advocate, for respondent no.02.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29TH NOVEMBER 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. With consent of both the parties, matter is taken up for hearing at admission stage.

02. The petitioners' predecessor, Shankar Hiraji Darade filed revision application before Additional Commissioner, Nashik Division, Nashik, challenging the decision in RTS Appeal No. 80 of 2012 dated 10.12.2012 passed by Additional Collector, Ahmednagar. The applicants have contended that they were not aware about filing of the petition by their

predecessor. Said Shankar Darade expired on 10.01.2014 and the said revision has been disposed of as abated on 20.10.2016. The said order is under challenge in this petition.

03. The petitioners have also contended that since they were not aware about the revision application filed by their predecessor, they were not aware about disposal of the revision petition as abated. They are illiterate agriculturists having no knowledge about procedure of law and, therefore, could not bring them on record within the stipulated period. They came to know about disposal of the matter somewhere in June 2017 and thereafter they collected the documents on 13.07.2017. They contend that their vital rights are involved. The Tribunal had decided the matter in their favour, however, in appeal, the matter was decided against them. Therefore, the revision was filed. Due to the communication gap between them and the Advocate engaged by their predecessor who was from Nashik, they had no idea about presentation of the revision application as well as its disposal.

04. Present petition has been objected on the ground that inspite of giving proper opportunity to the revision application to bring the legal heirs on record, necessary changes have not been made within limitation and, therefore, the revision application has been rightly disposed of as abated.

05. In order to cut short, I would like to say that all the Advocates representing respective parties have argued in support of their respective contentions.

06. From documents those have been produced on record, it can be seen that a sale deed came to be executed between one Narayan Tukaram Dagadkhair with deceased Shankar Hiraji Darade on 01.03.1983 in respect of 83 Are agricultural land from Survey No. 61/4 situated at village Hanuman Takli, Taluka Pathardi, District Ahmednagar. 7/12 extract was prepared after mutation was taken vide entry no.1965 in pursuance to the sale deed. Thereafter, it appears that dispute arose between Narayan Dagadkhair and Shankar Darade. RTS Appeal No. 141 of 2011 filed by Shankar Darade came to be allowed. The matter was taken in second RTS appeal before Additional Collector, Ahmednagar, bearing Second RTS Appeal No. 80 of 2012 by Narayan Dagadkhair. That appeal came to be allowed. Thereafter, Shankar Darade had filed the said revision.

07. After the death of Shankar Darade, it appears that the Advocate for Narayan Dagadkhair informed the said fact to the Tribunal on 27.11.2014. However, at that time, death certificate was not appended. It was orally directed to the Advocate for the revision petitioner to bring the legal representatives of Shankar Darade on record but no such application was filed within the limitation.

Ultimately, the revision was dismissed as abated on 20.10.2016.

08. The petitioners have come with a case that they were absolutely not aware about the proceedings which were filed by their predecessor. It is also required to be considered that inspite of suggestion given to the Advocate representing the revision applicant, that he should take steps to bring the legal representatives on record, yet he had not sent any kind of communication. The applicants are stated to be illiterate and agriculturists from rural area and, therefore, may not be aware about the legal requirement of bringing the legal representatives on record within the stipulated time. Therefore, taking into consideration these aspects, the order passed by the revisional court, abating the revision deserves to be set aside. However, at the same time, respondent no.02 deserves to be compensated in terms of money for the inconvenience that is caused.

09. In the result, the writ petition is allowed.

(a) The order passed by the Additional Commissioner, Nashik Division, Nashik, in proceedings bearing No. RTS/Revision/23/2013 on 20.10.2016, abating the revision, is hereby set aside, subject to payment of costs of Rs. 5,000/- [Rupees five thousand] to respondent no.02. The amount of costs shall be deposited by the petitioners before the revisional authority within a period of 15 days from today. On

deposit of costs, as aforesaid, respondent no.02 herein shall be at liberty to withdraw the amount.

(b) Upon deposit of costs, as aforesaid, the revision shall stand restored to the file of the Divisional Commissioner, Nashik Division, Nashik, and thereupon if the petitioners present application for bringing them on record, then it shall be considered by the Additional Commissioner, in accordance with law.

(c) Both the parties shall appear before the Additional Commissioner, Nashik Division, Nashik, on 08th January 2018 and shall abide by further instructions in the matter by the Additional Commissioner.

(d) If the costs, as aforesaid, is not deposited by the petitioners, the present petition shall stand dismissed automatically without reference to this court and the impugned order of the Additional Commissioner shall stand automatically revived.

(e) Rule made absolute in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

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