

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

**BENCH AT AURANGABAD.**

**WRIT PETITION NO.10343 OF 2016**

1. Nanasaheb S/o Mohaniraj  
Pawar, Age 68 years,  
Occ.Agriculture,

2. Babasaheb S/o Mohaniraj  
Pawar, Age 65 years, Occ.  
Agriculture,

Both R/o Wadala Mahadeo,  
Tq. Shrirampur, Dist.  
Ahmednagar.

... Petitioners.

Versus

1. The Sub-Divisional Officer,  
Shrirampur Division,  
Dist.Ahmednagar.

2. The Tahsildar,  
Tq. Shrirampur, Dist.  
Ahmednagar.

3. Kamalabai Laxman Wabale,  
Age 69 years, Occ.Agril.,  
& Household, R/o Rui,Tq.  
Rahata, Dist.Ahmednagar.

4. Indubai Bhaskar Takte,  
Age 63 years, Occ.Agril.  
& household, R/o Khadamba,  
Tq.Rahuri, Dist.Ahmednagar.

5. Vasundhara Sanjay Rohom,  
Age 68 years, Occ.Agril &  
Household, R/o Wadangale Vasti,  
Tq.Kopargaon, Dist.Ahmednagar.

6. Lilabai Ramdas Game,  
Age 43 years, Occ.Agril.  
& Household, R/o Khairi  
Nimgaon, Tq. Shrirampur,  
Dist.Ahmednagar.

7. Suresh Rakhmaji Chaudhari,  
Age 41 years, Occ.Agriculture,

8. Prabhakar Rakhmaji Chaudhari,  
Age 39 years, Occ.Agriculture,

9. Ramesh Rakhmaji Chaudhari,  
Age 33 years, Occ.Agriculture,

10. Vilas Rakhmaji Chaudhari,  
Age 31 years, Occ.Agriculture,

11. Bapu Rakhmaji Chaudhari,  
Age 35 years, Occ.Agriculture,

Respdts 7-11 R/o Jalgaon,  
Tq. Rahata, Dist.Ahmednagar.

12. Padma Eknath Patare,  
Age 37 years, Occ.Agril. &  
Household, R/o Karegaon,  
Tq. Shrirampur, Dist.Ahmednagar.

13. Chaya W/o Sandeep Kajale,  
Age 33 years, Occ.Agril. &  
Household, R/o Karegaon, Tq.  
Shrirampur, Dist.Ahmednagar. ... Respondents.

...  
Mr.Shivaji T.Shelke, advocate for the petitioners.  
Ms.R.P.Gour, A.G.P. for the State.  
Mr.S.S.Wagh, advocate for Respondent Nos.3 to 13.

...

**CORAM : S.V.GANGAPURWALA AND  
MANGESH S. PATIL, JJ.**

**Date : 11.09.2017.**

**PER COURT :**

1. Notice to the Respondents.
2. Learned A.G.P. waives service of notice for Respondent Nos.1 and 2.
3. Mr.Wagh, learned counsel waives service of notice for Respondent Nos.3 to 13.
4. With the consent of learned counsel for parties, the petition is taken up for final hearing.
5. The petitioners had moved an application for restoration of land with the Respondent Nos.1 and 2.
6. Mr.Shelke, learned counsel submits that the land was initially owned by one Jivabha Appaji Pawar. Jivabha had three sons, namely, Deorao, Parbat and Bhika. Jivabha is dead. All three sons of Jivabha are also dead. It is submitted by the learned counsel that only Deorao had only one son namely Mohniraj. He is also

dead. The petitioners herein and Respondent Nos.3 to 13 are legal heirs of deceased Mohniraj. The petitioners had applied for legal heirship certificate with the Civil Judge (S.D.), Shrirampur. Under order dated 9.7.2014, legal heirship certificate was granted to the present petitioners. Pursuant to the said legal heirship certificate, the petitioners had applied for restoration of land under the provisions of Maharashtra Ceiling on Holdings Act but the said application is rejected solely on the ground that heirship certificate does not mention the number of the property. According to the learned counsel, heirship certificate only declares the status of the parties being the legal heirs of the deceased.

7. Learned A.G.P. submits that as the details of the properties were not delineated in the certificate, the order is rightly passed.

8. Mr.Wagh, learned counsel for Respondent Nos.3 to 13 supports the arguments of Mr.Shelke, learned counsel for the petitioners.

9. The legal heirship certificate under the provisions of the Bombay Regulation Act, 1827 only declares the status of the person being legal heir of the deceased. With regard to the right of the petitioners in a particular property, it is for the authority before whom the application is made to enquire into the rights of the deceased, so also the present petitioners in and over the property of which right is claimed.

10. It appears that the petitioner is claiming the right in Gat No.233 (Old S.No.158/1) to the extent of 3 Hectares 35 Ares situated at village Wadala Mahadeo, Tq. Shrirampur.

11. The authority concerned before whom the application is filed with regard to the said property will have to enquire about the right of the deceased Mohniraj, so also the petitioners who are claiming through Mohniraj on the basis of legal heirship certificate and then arrive at a conclusion.

12. In light of the above, the impugned

order is quashed and set aside. The Respondent-authority shall enquire into the rights of the deceased through whom the petitioners are claiming in respect of the property for which the application is made, so also the right of the petitioners qua the deceased from whom they are claiming to be the legal heirs. The application shall be dealt with on its own merits in accordance with law expeditiously, preferably within six (6) months.

13. The Writ Petition is disposed of. No costs.

**(MANGESH S. PATIL, J.)**

**(S.V.GANGAPURWALA, J.)**

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