

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

Shivaji s/o Bhanudas Kande
Age - 84 years, Occ - Agriculture
R/o Sapnai, Taluka - Kallam,
District - Osmanabad

VERSUS

- | RESPONDENTS | |
|-------------|--|
| 1. | <p>Dashrath s/o Namdeo Khune
 Since deceased through legal representative
 Siddharth s/o Dashrath Khune
 Age - 24 years, Occ - Education
 R/o Chorakhali, Taluka - Kallam,
 District - Osmanabad</p> |
| 2. | <p>Bapu s/o Namdeo Khune
 Age - 51 years, Occ - Agriculture
 R/o Chorakhali, Taluka - Kallam,
 District - Osmanabad</p> |
| 3. | <p>Mahendra s/o Namdeo Khune,
 Age - 44 years, Occ - Agriculture
 R/o Chorakhali, Taluka - Kallam,
 District - Osmanabad</p> |
| 4. | <p>Balasaheb s/o Namdeo Khune
 Age - 49 years, Occ - Agriculture
 R/o Chorakhali, Taluka - Kallam,
 District - Osmanabad</p> |
| 5. | <p>Kusum d/o Namdeo Khune
 Age - 46 years, Occ - Household
 R/o Chorakhali, Taluka - Kallam,
 District - Osmanabad</p> |
| 6. | <p>Shobha d/o Namdeo Khune,
 Age - 41 years, Occ - Household
 R/o Chorakhali, Taluka - Kallam,
 District - Osmanabad</p> |

7. The Additional Tahesildar,
Land Reforms, Kallam,
Taluka - Kallam, District - Osmanabad
8. The Deputy Collector (Land Reforms)
Osmanabad, District - Osmanabad

.....

Mr. Anant R. Devakate, Advocate for the petitioner
Mr. S. P. Tiwari, AGP for respondent - State
Mr. P. V. Jadhavar, Advocate for respondents No. 1 to 6.

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 25th JUNE, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.
2. Petitioner claims that him, along with his brother Gangaram are owners of land Gut No. 659 and 660 (Old survey No. 244 and 245) situated at village Chorakhali, Taluka - Kallam, District - Osmanabad.
3. Present respondents No. 1 to 6 had initiated proceedings bearing File No. 2001/TNC/WS/348 before Additional Tahsildar (LC) Kallam, District - Osmanabad, claiming tenancy rights over 13 Acre 8 *guntha* and 14 Acre 25 *guntha* lands in survey No. 244 and 245 respectively. In the proceedings, the petitioner had put

in his appearance. However, the proceedings had been pending for pretty long time.

4. Despite appearance having been put in by the petitioner, the Tahsildar under his order dated 4th July, 2003 purported to allow the application filed by respondents No. 1 to 6 considering that respondents in said proceedings had not put in their appearance and in the circumstances had allowed the application filed by present respondents No.1 to 6.

5. In November, 2003, petitioner had preferred an appeal bearing File No. 2003/TNC/A/3 before Deputy Collector, Land Reforms, Osmanabad as also the other respondents, in said proceedings initiated by present respondents No.1 to 6 had preferred another appeal against aforesaid decision of Tahsildar.

6. Under order dated 4th February, 2004, Deputy Collector, Land Reforms had allowed the appeal filed by aforesaid other respondents in the proceedings before the Tahsildar and had remitted the matter to the Tahsildar.

7. Petitioner's appeal, which had been pending, lingered on and later came to be dismissed in default on 5th July, 2005. The petitioner had preferred application immediately for restoration

of the appeal. However, under unavoidable circumstances, proceedings could not be attended to and the same came to be dismissed in default in November, 2005. In the circumstances, the petitioner moved another application for restoration of the appeal, which came to be rejected by respondent No. 8, Deputy Collector, Land Reforms. As such, the petitioner had been before Maharashtra Revenue Tribunal and the Tribunal had dismissed the appeal under its order dated 30th November, 2017. As such, the petitioner is before this court.

8. Learned advocate for the petitioner submits that all through the authorities hitherto have went ahead with the proceedings discernibly cursorily. He submits, despite appearance having been caused on behalf of the petitioner, it had been assumed by the Tahsildar that the petitioner had not put in appearance in the proceedings. While the order had been passed in favour of respondents No. 1 to 6, the same had been appealed from by the petitioner as well as other respondents, who were respondents before the Tahsildar. The order passed by the Tahsildar had been set aside by the Deputy Collector, Land Reforms in the appeal filed by other respondents, whereas appeal filed by the petitioner was lingering on for over one and one half years. The appeal was dismissed in default so was the

case with the restoration application. He submits, matters could not be expected to be attended to personally by petitioner as advocate had been engaged. Non attendance could hardly be attributable to the petitioner. Subsequent application for restoration filed by the petitioner had not been entertained on technical grounds. He submits that rights of the petitioner to immovable property are at stake and under technicalities, petitioner's right to defend is getting deprived. He submits that petitioner has a substantial case on merits as would emerge from that appeal of other respondents has been allowed. In such a case, proper and judicious view be taken and petitioner be put to certain conditions.

9. Learned advocate for respondents No. 1 to 6, however, submits that the Maharashtra Revenue Tribunal has aptly observed that the petitioner has been rather casual in prosecuting the matter. It has been considered by the Tribunal that negligence would not alone be attributable to the advocate, the petitioner was also supposed to be diligent in prosecuting the matter. He further submits that there does not appear to be express provision for restoration of matters dismissed in default.

10. Although, aforesaid submissions are advanced on behalf of

respondents No. 1 to 6, yet, it appears to be a case wherein appeal filed by the petitioner in November, 2003, had been pending for quite a long time before the appellate authority, after decision in the case of appeal by other respondents. It appears that unremitting attention on behalf of the petitioner would not be expected, especially when advocate has been engaged. It appears that the authority has approached the matter too technically. Object under the legal procedure evolved is to subserve the cause of justice and not to subvert the same.

11. In the circumstances, adopting technical approach would not be conducive to healthy judicial process. Here, in the present case, it is not denied that petitioner, in fact had engaged an advocate and the petitioner had been going by his guidance. It appears that due to lingering on of proceedings, and for little amount of laxity in prosecution not exactly attributable to the petitioner, he shall not be made liable to suffer. Inconvenience caused to the other side in the process may be compensated by awarding costs.

12. Taking overall view of the matter, writ petition, it appears, would be expedient to be considered positively. Order passed by the Maharashtra Revenue Tribunal dated 30th November, 2017

and those by Deputy Collector, Land Reforms dated 5th July, 2005 of dismissing the appeal in default, dated 8th November, 2005 dismissing restoration application in default and dated 5th April, 2006 rejecting further restoration application of the petitioner, are set aside, the appeal before Deputy Collector, Land Records gets restored.

13. In order to obviate further consumption of time before Deputy Collector, Land Reforms, as appeal filed by other respondents has already been allowed by said authority and the matter has been remitted to Tahsildar for reconsideration, it would be expedient that the appeal filed by the petitioner before Deputy Collector, Land Reforms be given same treatment as is received in appeal bearing File No. 2003/TNC/WS-45 filed at the instance of other respondents in the proceedings originally initiated before the Tahsildar by respondents No. 1 to 6.

14. In view of aforesaid, appeal bearing File No. 2003/TNC/A/3 filed by the petitioner before the Deputy Collector, Land Reforms, Osmanabad stands allowed in the same terms as appeal filed by other persons is allowed. Eventually, order impugned in the appeal before Deputy Collector, Land Records, Osmanabad is set aside. Application filed by respondents No.1 to 6 before

Additional Tahsildar (LC) Kallam bearing File No. 2001/TNC/WC/348 is restored to its position as was subsisting before 4th July, 2003. Matter is remitted back to Tahsildar for reconsideration as directed by Deputy Collector, Land Reforms, Osmanabad under order dated 4th February, 2004 in appeal bearing No.2003/TNC/WS-45.

15. Amount of Rs.20,000/- deposited by the petitioner be appropriated towards costs payable to respondents No. 1 to 6 equally and the amount be allowed to be withdrawn by them accordingly. As such, writ petition stands allowed. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]