

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2999 OF 2016

- 1) Shaikh Salim Shaikh Nabi
Age 62 years, Occu. Service
- 2) Shaikh Shamim Shaikh Nabi
Deceased through his LR's.
- 2A) Shaikh Yunus Shaikh Shamim
Age 28 years, Occu. Labour
- 2B) Shaikh Anis Shaikh Shamim
Age 25 years, Occu. Labour
- 3) Shaikh Chand Shaikh Nabi
Age 42 years, Occu. Service
- 4) Shaikh Nazir Shaikh Nabi
Age 39 years, Occu. Service

All R/o Near Akhwindshaha Dargah
Vasmath road, Parbhani

.. Petitioners
(Orig. Applicants)

Versus

- 1) The Maharashtra State Through
Secretary, Revenue Department
Mantralaya, Mumbai – 32
- 2) The Divisional Commissioner
Aurangabad District Aurangabad
- 3) The Collector, Parbhani
District Parbhani
- 4) The Deputy Collector, Atiyat
Parbhani, District Parbhani
- 5) Shaikh Bashir S/o Mdar
Age Major, Occu. Business
R/o Near Akshada Mangal Karyalay
Bagwali Masjid, M.K.V. Corner
Old Municipal Nak, Vasmat Road,
Parbhani

- 6) Mazaroddin A. Hamid
Age Major, Occu. Business
R/o Masud Colony,
Darga Road, Parbhani
- 7) Amirroddin A. Hamid
Age Major, Occu. Business
R/o Masud Colony,
Darga Road, Parbhani
- 8) Mhamad Bin Awaz
Age Major, Occu. Business
R/o Station Road, Near Shahi Masjid
Darga Road, Parbhani
- 9) Shaikh Suleman Shaikh Noor
Age Major, Occu. Business
R/o Shankar Nagar,
Behind Shivaji College,
Near Masjid, Parbhani
- 10) Mhamad Akbar
Age Major, Occu. Business
R/o Parbhani
Tq. and Dist. Parbhani
- 11) Sherkha Mehatab Kha
Age Major, Occu. Business
R/o Vishnu Nagar,
Beside Kisan Bekari
Vasmat Road, Parbhani
- 12) Javed Kha Abbas Kha
Age Major, Occu. Business
R/o Gaddivan Mohalla Azad Corner
Parbhani
- 13) Mohmad Amar Mohd. Jafar
Age Major, Occu. Business
R/o Yusuf colony
Tq. and Dist. Parbhani
- 14) Javed Kha Sattar Kha
Age Major, Occu. Business
R/o. Javed Elektrician Shivajinagar
Beside Rub Kata,
Vasmat Road, Parbhani

- 15) Sk. Ashpak Ali
Age Major, Occu. Business
R/o Junagar Palika Naka
Vasmat Road, Parbhani
- 16) Mirza Habib Baig
Age Major, Occu. Business
R/o Motha Maroti
Deshmukh Galli
Tq. and Dist. Parbhani
- 17) Sk. Shafi Mohammad Isa
Age Major, Occu. Business
R/o In front of Adv. Gafar
Momin Gandhi Park,
Tq. And Dist. Parbhani
- 18) Sk. Akhil Sk. Jafar
Age Major, Occu. Business
R/o M.K.Vi Road Behind Collector
Office, Parbhani
Tq. and Dist. Parbhani
- 19) Ifkam Ur Ansari
Age Major, Occu. Business
R/o Juna Naka Nagar Palika
M.K. Vi Corner, Beside Bagwali Masjid
Near Akshada Mangal Karyalay,
Parbhani, Tq. and Dist. Parbhani
- 20) Ifkam Ur Ansari
Age Major, Occu. Business
R/o Juna Naka Nagar Palika
M.K. Vi Corner, Beside Bagwali Masjid
Near Akshada Mangal Karyalay,
Parbhani, Tq. and Dist. Parbhani
- 21) Moin Khan Khaja Khan Iphkam
Ur Ansari Age Major, Occu. Business
R/o Juna Naka Nagar Palika
M.K. Vi Corner, Beside Bagwali Masjid
Near Akshada Mangal Karyalay,
Parbhani, Tq. and Dist. Parbhani

22) Mahmad Khadir Ahmad Ajam
 Age Major, Occu. Business
 R/o Juna Naka Nagar Palika
 M.K. Vi Corner, Beside Bagwali Masjid
 Near Akshada Mangal Karyalay,
 Parbhani, Tq. and Dist. Parbhani

23) Sk. Jalil S. Sk. Isa,
 Age Major, Occu. Business
 R/o Juna Naka Nagar Palika
 M.K. Vi Corner, Beside Bagwali Masjid
 Near Akshada Mangal Karyalay,
 Parbhani, Tq. and Dist. Parbhani

.. Respondents

...
 Mr. S.V. Chandole, Advocate h/f. Mr. Arvind Deshmukh, Advocate
 for petitioners
 Mr. S.N. Kendre, AGP for respondent-State
 Mr. A.D. Kasliwal, Advocate for respondents no. 5 to 10
 ...

CORAM : SUNIL P. DESHMUKH, J.
 DATE : 07-08-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. After having heard learned counsel for the parties, it transpires that proceedings pursuant to Hyderabad Atiyat Inquiries Act 1952, for succession had been initiated at the instance of petitioners initially before the collector, however, since the delay in approaching was more than 3 years and such a delay was not amenable to be considered by the collector and the matter has to be considered by the commissioner pursuant to provisions of rule 12 of Hyderabad Atiyat Inquiries Rules, 1952.

3. Accordingly, the matter had been made over by the collector to the divisional commissioner, Aurangabad, however, he had found certain discrepancies in the proposal and for removal of the deficiencies, the matter had been sent back to collector's office. Accordingly, some proceedings followed in respect of the same before tahsildar. During the pendency of those proceedings before subordinate authorities, objections came to be filed by present respondents no. 5 to 23. Objections to the application for succession by present petitioners had been purportedly put forth. Ignoring that the office of collector had communicated to the deputy collector about the discrepancies and to proceed with the same, however, the deputy collector passed impugned order dated 30-01-2016, wherein purporting to decline succession to present petitioners along with rejection of application for condonation of delay.

4. It appears, in the process, the authority has exceeded its power. Needless to refer that the order is also faulty on two other counts. Authority proceeded with giving decision on the merits and also refusing to condone delay. The two aspects are incompatible. If one rejects condonation of delay, merit ought not to be gone into and if merits are to be considered that could be possible only upon condonation of delay. In any case, obviously, while the brief to the office had been in respect of removal of

discrepancies, the deputy collector appears to have overtraded his brief while the matter had been sent back by divisional commissioner, to the collector for removal of deficiencies, and went on to decide merits and delay while the rules do not invest him with such power.

5. In view of this clearly emerging position, the impugned order is untenable and deserves to be set aside and is accordingly set aside and the matter is restored to the stage at which it had been resting in respect of communication dated 27-07-2012, to the Tahsildar. The proceedings shall be proceeded with further accordingly from that stage onwards.

6. It is needless also further to refer to that it is open for present respondents no. 5 to 23, to take up their contentions before appropriate forum.

7. Writ petition is disposed of.

8. Rule made absolute accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/

Anil
Rameshrao
Pundlik

Digitally signed
by Anil
Rameshrao
Pundlik
Date: 2018.08.31
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