

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

WRIT PETITION NO.2981 OF 2015

**DASHRATH RAU DAREKAR AND OTHERS
VERSUS
BAPU RANGNATH DAREKAR AND ANOTHER**

**WITH
CIVIL APPLICATION NO. 5037 OF 2018**

**CHANDRAKANT RAJARAM DEVKAR AND OTHERS
VERSUS
DASHRATH RAU DAREKAR AND OTHERS**

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Advocate for the Petitioners : Shri A. K. Gawali and
Shri V. P. Narwade

Advocate for Respondent No.1 : Shri N. P. Ghanwat

AGP for Respondent Nos. 3 and 4 : Shri N. T. Bhagat

Advocate for Respondent- Intervener : Shri P. N. Khedkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 11th DECEMBER, 2018.

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PER COURT :

1. This Court (Coram : V. K. Jadhav- J.) had passed an order on 17/01/2018 after hearing the learned Advocate for the petitioners and respondent No.1. A consent was recorded that the parties shall move a joint application before the authority below (the Tahsildar) seeking adjournment and the authority may consider the same.

2. By an application dated 18/02/2018, these petitioners informed the Tahsildar Shrigonda about the pendency of this Writ Petition and the order passed. Copy of the order was also placed before him. This issue is not undisputed by the litigating sides.

3. Neither respondent No.1, who had consented before this Court, made an application for adjournment, nor has the Tahsildar considered the order of this Court.

4. The respondent now contends that the proceedings have already been decided by the Tahsildar and an Appeal has been preferred by these petitioners before the SDO, Shrigonda Parner Sub Division, Ahmednagar. It is, therefore, stated that this petition is rendered infructuous.

5. I find that had this Court not passed an order on 17/01/2018, this petition could have been rendered infructuous. When this Court passed order, it had considered the submissions of the parties and, therefore, the Tahsildar was

expected to adjourn the proceedings so that this Court would consider this petition on its merits. This is reflected from the order dated 09/03/2018 passed by the same Court on Civil Application No. 3578/2018 and the petitioners were granted leave to amend their prayer clauses and the order of the Tahsildar which was passed in defiance of the directions of this Court on 05/03/2018, was stayed.

6. The learned Advocate for the petitioners submits, on instructions, that the respondents are influential persons and it was under such influence that the Tahsildar has ignored the order of this Court. The Tahsildar is now arrayed as respondent No.4 in this petition. It is apparent that when this Court was inclined to consider this petition and expected the Tahsildar to adjourn the proceedings, he has passed the order dated 05/03/2018 by ignoring the order of this Court.

7. The learned Advocate for the petitioners submits that they were compelled to file the Appeal Tenancy Case No. 100/2018 since they were practically in a 'do or die' situation and had no option. They would have been dispossessed and

would have lost their agricultural land. A statement is now made that Tenancy Case No.100/2018 would be withdrawn by these petitioners within two weeks from today.

8. I find that this Court cannot abdicate its jurisdiction on account of a motivated action by respondent No.4 Tahsildar. This petition would, therefore, be entertained on its merits and is not treated as being an infructuous petition as the conduct of the Tahsildar needs to be dealt with and a challenge posed by the petitioners needs to be adjudicated upon.

9. In view of the above, the learned AGP shall file the personal affidavit of respondent No.4 and he is granted an opportunity to show cause as to why proceedings with regard to his disobedience should not be initiated against him. The affidavit shall be filed, on or before 11/01/2019.

10. List this petition for admission hearing in the urgent admissions category on 16/01/2019.

11. The relief granted by this Court on 09/03/2018, shall

continue.

12. Insofar as the Civil Application No.5037/2018 is concerned, the said applicants pray for addition as a respondent in the Writ Petition. It is contended that the applicants are the heirs of the original landlord. The learned Advocates for the respondents submit that the said heirs have nothing to do with the property at issue. Yet, if they are added as respondents, the litigating sides can face their contentions.

13. As such, the Civil Application is allowed. The petitioners shall add the said applicants as respondents in the Writ Petition within two weeks from today. The learned Advocate appearing for the applicants waives service of notice on behalf of the added respondents in the Writ Petition.

(RAVINDRA V. GHUGE, J.)

shp/-