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

WRIT PETITION NO.1703 OF 2019

- 1) Tukaram S/o Gundappa Darekar
Age: 50 years, Occ. Agriculture,
R/o Aarali (Kh) Tq. Tuljapur,
Dist. Osmanabad.
- 2) Mahesh S/o Tukaram Darekar,
Age: 22 years, Occ. Agriculture,
R/o Aarali (Kh) Tq. Tuljapur,
Dist. Osmanabad
- 3) Mukesh S/o Tukaram Darekar
Age: 20 years, Occ. Agriculture,
R/o Aarali (Kh) Tq. Tuljapur,
Dist. Osmanabad
- 4) Pushpa W/o Tukaram Darekar
Age: 45 years, Occ. Household,
R/o Aarali (Kh) Tq. Tuljapur,
Dist. Osmanabad

..PETITIONERS

VERSUS

- 1) The State of Maharashtra
Through the Principal Secretary,
Revenue and Foresh Department Mantralaya,
Mumbai.
- 2) The Deputy Director,
Land Records,
Aurangabad Region, Aurangabad.
- 3) The Superintendent Land Records,
Osmanabad
- 4) The Deputy Superintendent Land Records,
Tuljapur, Tq. Tuljapur, Dist. Osmanabad
- 5) Shivaji S/o Taty Darekar
Age: 80 years, Occ. Agriculture,

(2)

R/o Aarali (Kh) Tq. Tuljapur,
Dist. Osmanabad

- 6) Gorakh S/o Shivaji Darekar,
Age: 52 years, Occ. Agriculture,
R/o Aarali (Kh) Tq. Tuljapur,
Dist. Osmanabad

..RESPONDENTS

Mr Krishna K. Kulkarni, Advocate for Petitioners;
Mr S.S. Dande, A.G.P. for Respondent Nos.1 to 4

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 27th February, 2019

ORAL ORDER:

Heard learned Counsel appearing on behalf of the petitioners.

2. The petitioners are before this Court raising a challenge to the notice dated 29th October, 2018. Though this is a challenge in the petition, on perusal of material placed on record and on hearing learned Counsel for the petitioners, we are of the opinion that the petition can be disposed of at admission stage itself.

3. Issue notice to the respondent Nos. 1 to 4, returnable, forthwith.

4. Learned A.G.P. waives service of notice for respondent Nos. 1 to 4.

5. Respondent Nos.5 and 6 Shivaji Tatya Darekar and Gorakh Shivaji Darekar, initially submitted an application before the District Superintendent of Land Records, Osmanabad, seeking cancellation of revenue entries under the orders of the Consolidation Officer along with an application for

(3)

condonation of delay. The District Superintendent of Land Records, Osmanabad, by order dated 6th November, 2017, rejected the application seeking condonation of delay itself. A copy of the order passed by the District Superintendent of Land Records, dated 6th November, 2017 is placed on record at Exh. 'C'.

6. Being aggrieved by the said order, respondent No. 5 and 6 preferred an appeal before the Deputy Director of Land Records, Aurangabad. The petitioners are served with a notice. A copy of a notice is placed on record at Exh.'E' collectively. The hearing of the appeal was scheduled on 26th October, 2018. On 29th October, 2018, a notice was issued by the Deputy Superintendent of Land Records, Tuljapur, calling upon the parties to remain present on the spot, and further informing that the notice is issued under the directions of the Deputy Director of Land Records, Aurangabad, dated 7th September, 2018. It is further stated that the file of the appeal submitted to the Deputy Director of Land Records, Aurangabad was forwarded to the District Superintendent of Land Records, Osmanabad on 7th September, 2018 and under the directions of the superior authorities, notice is issued for carrying out the exercise of measurement of land.

7. Petitioner No. 1 had approached the Deputy Superintendent of Land Records, Tuljapur by submitting an application dated 22nd November, 2018 with a request to provide a copy of the order issued to the officer concerned from his superior officer. Then, by another communication dated 17th

(4)

November, 2018 it was informed to the Deputy Superintendent Land Records, Tuljapur that the petitioner along with other persons was present on the spot on 12th November, 2018 as well on 13th November, 2018, but none of the representatives of the office of the Deputy Superintendent of Land Records attended the particular spot.

8. In response to earlier application of the petitioners, it was informed to the petitioner No.1 by communication dated 29th November, 2018 issued by Deputy Superintendent of Land Records, Tuljapur that his office is not in a position to provide the copy of appeal as the appeal is pending before the authorities. The submission of learned Counsel is, notice dated 29th October, 2018 itself is unsustainable for the reason that during the pendency of the appeal which is a proceedings initiated by the respondent itself at belated stage, the exercise of measurement of the land is nothing but an attempt to create record / evidence. On a specific query being made to learned Counsel, he submitted before us that the exercise of measurement of the land in pursuance of the notice dated 29th October, 2018 is already undertaken by the authorities and the so-called map is prepared as per the instructions but the same is not submitted to the Deputy Director of Land Records, Aurangabad.

9. If this is the fact situation, we see no reason to entertain the petition on the prayer made in the petition which is the basic prayer i.e. prayer clause

(5)

(C) and the petition now can be disposed of with liberty to the petitioners to file objection application to the Deputy Director of Land Records, Aurangabad, before whom the appeal is pending. If such application is received by the Deputy Director of Land Records, Aurangabad and if the map is submitted to the Deputy Director of Land Records through the Deputy Superintendent of Land Records, Tuljapur, the Deputy Director of Land Records, Aurangabad to consider the objection application if filed by the petitioners, on its merits and on the basis of the record available with him and may pass appropriate orders on the application and then to decide the appeal which is pending before him.

10. We make it clear that we have not expressed any opinion on the merits of the application. We have only referred to the submissions of the Counsel and documents placed on record. We further state that if an order is passed by the Deputy Director of Land Records, Aurangabad on objection application and if the petitioners are aggrieved by such order, they are at liberty to avail appropriate remedies under law to challenge the said order, if so advised.

With the aforesaid observations/directions, the petition is disposed of.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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