IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6806 OF 2018

1. Keshav s/o. Sakharam Mhaske,
Age : 61 years, Occ. Agri.,

2. Bhimabai w/o. Keshavrao Mhaske,
Age : 52 years,
Occ. Agri. and Household,
Both r/o. Warur (Bk.),
Tq. Shevgaon,
Dist. Ahmednagar

3. Shantabai w/o. Shridhar Mhaske,
Age : 50 years,
Occ. Agri. and Household,
r/o. Shree Krushna Electricals,
Shevgaon-Aakhegaon Road,
Tq. Shevgaon, Dist.Ahmednagar

4. Baban s/o. Ganpat Bhusare,
Age : 65 years. Occ. Agri.,
r/o. Warur (Bk.), Tq.Shevgaon,
Dist. Ahmednagar,

5. Rajmohammad Rasul Baig
Deceased through legal representatives

5-A. Rajjack Rajmohammad Baig,
Age:42 years, Occ. Agri.,

5-B. Mubarak Rajmohammade Baig,
Age : 40 years, Occ. Agri.,

5-C. Riyaj Rajmohammad Baig,
Age : 35 years, Occ. Agri.,

All r/o. Warur (Bk.), Tq.Shevgaon,
Dist. Ahmednagar

5-D. Hasina Munir Sayyad,
Age : 35 years,
Occ. Agri. and household,
r/o. Kambi, Tq. Shevgaon,
Dist. Ahednagar

5-E. Sayrabi Rajmohammad Baig,
Age : 61 years,
Occ. Agri. and Household,
r/o. Warur (Bk.), Tq. Shevgaon,
Dist. Ahmednagar

6. Harshada Dadasaheb Kakade,
Age : 34 years,
occ. Medical Practitioner
and agri., r/o. Bangal Child
Hospital, Tq. Akole,
Dist. Ahmednagar ..Petitioners

Vs.

The State of Maharashtra,
through its Department of
Revenue, Mantralaya, Mumbai
and others ..Respondents

Mr. Y.V.Kakade, Advocate for petitioners
Mr. A.S.Shinde, AGP for respondent nos.1 to 5
Mr. A.B.Kale, Advocate for respondent no.6

CORAM : R.G. AVACHAT, J.
RESERVED ON : SEPTEMBER 11, 2019
PRONOUNCED ON : OCTOBER 15, 2019

PER COURT :-

This Writ Petition is directed against the order dated 05.12.2017 passed by the Hon'ble Minister of State for Revenue in Appeal–3316/3057/PRK.257/J-6.

2. By the impugned order, the Revision Application preferred by respondent no.6 herein came to be allowed. The order dated 01.02.2016 passed by Deputy Director of Land Records, Nashik Region, Nashik, came to be set aside. The decision of the District Superintendent of Land Records, Ahmednagar, dated 30.12.2013 has been affirmed.

3. Heard.

4. Petitioner nos.1 to 5 and 6 were respondent nos.3 to 6 and 8 in the appeal before the Hon’ble Minister for State (Revenue). It is the contention of the petitioners that notice of appeal had not been served upon petitioner no.6. Original respondent no.7 passed away pending the appeal. His legal

representatives have not been brought on record. The impugned order, therefore, is non-est.

5. Mr.Kale, learned Counsel for respondent no.6, would submit that the petitioners were agitating the cause, which was common to them. The death of one of them and failure to effect service of notice of hearing of appeal would, therefore, be of no consequence. The Hon’ble Minister has passed the order on appreciating the facts and circumstances of the case. Learned Counsel, therefore, urged for rejection of the petition.

6. Petitioner no.6 is stated to have been residing at Akole, Tq.Akole, Dist. Ahmednagar, whereas in the caption of the appeal memo, her address was shown as – resident of Akole, Tq. Shevgaon, Dist. Ahmednagar. There is nothing to indicate petitioner no.6 to have been served with notice of the appeal. One Raj Mohammad Rasul Baig was respondent no.7 in the appeal before the Revenue

Minister. Raj Mohammad passed away on 24.03.2017. Hearing of the appeal took place in October and November, 2017. The same indicates that the appeal was heard after respondent no.7 in the appeal, passed away. It needs no mention that the judgment and order passed against a dead person is a nullity.

7. If the impugned judgment and order of the Hon’ble Minister of State (Revenue) is upheld, there would be two inconsistent decisions. The judgment and order passed by the Deputy Director of Land Records, Nashik Region, would hold the field so far as regards petitioner no.6 and the deceased – Rajmohammad Rasul Baig are concerned, whereas, so far as regards the other petitioners are concerned, said decision would stand reversed by virtue of the impugned order of the Hon’ble Minister.

8. Suffice it to say that no legal representative of deceased respondent no.7 were brought on record in the appeal before the Hon’ble

Minister. Respondent no.8 (petitioner no.6 herein) had not been served with the notice of the date of hearing of the appeal. The impugned judgment is, therefore, liable to be set aside.

9. In the result, the petition partly succeeds. The judgment and order dated 05.12.2017 passed by the Hon'ble Minister of State for Revenue in Appeal – 3316/3057/PRK.257/J-6, is hereby set aside. The matter is remanded back to the file of the Hon’ble Minister of State (Revenue) to decide it afresh after giving an opportunity of hearing to all parties concerned.

[**R.G. AVACHAT, J.**]

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