

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

28 WRIT PETITION NO.2064 OF 2020

DARGAH HAJRAT MOULANA SHAH MUNTAJIBUDDIN ZAR
ZAR BAKSH KHULTABAD THROUGH ITS PRESIDENT
VERSUS
ABDUL SATTAR BURHAN BAKSH THROUGH LRS TAJODDIN
LRS HOORBANO TAJJODDIN AND OTHERS

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Ms. P.S. Talekar, Advocate for the petitioner.

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CORAM : **Rohit B. Deo, J.**

DATE : 4th February 2020.

ORDER :-

. The petitioner is aggrieved by the order dated 30.12.2019 rendered by the Deputy Commissioner (Revenue), whereby the application preferred by the petitioner seeking impleadment as party to the proceeding, is rejected.

2. It would be necessary to refer to the earlier round of litigation and particularly to the order dated 24.04.2019 in Writ Petition 838 of 2018. The said petition was preferred by the present petitioner challenging the order dated 07.07.2016 passed by the Deputy Commissioner (Revenue), whereby the delay of 48 years and 6 months was condoned.

3. In paragraph 3 of the order in Writ Petition 838 of 2018, one of the issues involved, is culled out thus :

“3 Though the learned Advocate for the Petitioner has put forth several factors extensively, indicating the existence of the Dargah Committee and it's management over the various lands, I am not adverting to all those extensive submissions in their entirety since the issue before me is as to whether, the Petitioner is a necessary party and the Deputy Commissioner was obliged to hear the Petitioner before allowing the application of the Respondents, claiming to be heirs of Burhan Baksh, when they sought condonation of delay of 48 years and six months vide the application No.2015/Mashaka/ Bhusu/Inam/ CR-34, lodged on 04.03.2016 and allowed by the impugned order on 07.07.2016”.

Learned Single Judge partly allowed the petition observing thus :

“11 As such, though disputed questions cannot be gone into in the writ jurisdiction of this Court, it does prima facie appear that the Petitioner Committee has certain factors to establish it's connection with the lands mentioned by the Respondents in their application for seeking the succession certificate. If the Deputy Collector (Atiyat) could follow the principles of natural justice in calling for objections with regard to the enquiry initiated by it, I do not see any reason, which could have precluded the Deputy Divisional Commissioner from calling for such objections in order to ensure that the litigating parties before him, would not have any scope for causing misrepresentation indicating that they are

the only persons concerned with such huge immovable agricultural lands, which is almost 123 acres, inasmuch as, interested parties like the Petitioner could present their case.

12 Considering the above, this Writ Petition is allowed. The impugned order dated 07.07.2016 is quashed and set aside. The proceedings File No.2015/Mashaka/Bhusu/Inam/ CR34 stands restored to the file of Respondent No.6/ Deputy Commissioner (Revenue), Office of the Divisional Commissioner, Aurangabad. All the litigating sides would appear before the said Respondent No.6/Authority on 03.06.2019 at 11:00 am. Respondent No.6 shall issue a public notice calling for objections by publishing the said notice in a Marathi newspaper having wide circulation in the Aurangabad region like daily Lokmat/ Sakal / Divya Marathi and any largely circulated Urdu newspaper. After considering the objections of all the parties, who may lodge such objections with Respondent No.6, the said Authority shall proceed to decide the application for condonation of delay on it's own merits and pass a reasoned order.

13 Consequentially, the proceedings before the Deputy Collector (Atiyat), shall stand stayed at the stage at which they are and shall be subject to the outcome of the proceedings before Respondent No.6/ Deputy Commissioner (Revenue). In the event, Respondent No.6 refuses to condone the delay, the proceedings before the Deputy Collector (Atiyat) shall stand quashed. If Respondent No.6 condones the delay, the said proceedings would commence from the stage at which they were stayed”.

4. The learned Single Judge observed that prima facie it does appear that the petitioner Committee has brought on record certain material to establish its connection with the lands qua which the application is made for succession certificate and in which proceeding the delay is condoned. It is in this view of the matter, that the learned Single Judge has directed the Deputy Commissioner to invite objections and to hear all the objectors.

5. Learned Counsel for the petitioner Ms. Talekar would submit that apprehension of the petitioner is that if the petitioner is not a party, the Authority would merely permit the petitioner to file on record its objections and grant one time hearing, in which case, the petitioner would be seriously prejudiced by the absence of opportunity to rebut the contentions of the contesting respondents.

6. In essence, learned Counsel for the petitioner submits that be it clarified that the petitioner shall be entitled to participate in the hearing till conclusion of the hearing.

7. I do not see any reason for the petitioner to nurture such apprehension. It is obvious that the petitioner would be entitled to participate in the hearing till its conclusion. In so far as the grievance of the contesting

respondents that the petitioner is only delaying hearing, the grievance can be redressed by directing that the enquiry be conducted expeditiously.

8. This petition is disposed of with clarification recorded supra and a direction that the Deputy Commissioner (Revenue) shall finally decide the delay condonation application within 30 days from today.

(ROHIT B. DEO, J.)

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