

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 WRIT PETITION NO.14276 OF 2017

RAVSAHEB BABURAO KADAM DIED THROUGH LRS
LAXMIBAI RAVSAHEB KADAM AND OTHERS
VERSUS
MARUTI JAIRAM KADAM AND OTHERS

WITH

CIVIL APPLICATION NO.11575/2018

IN

WP/14276/2017

GOKARANA HANUMAN KADAM AND OTHERS
VERSUS
RAVSAHEB BABURAO KADAM DIED THROUGH LRS
LAXMIBAI RAVSAHEB KADAM AND OTHERS

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Advocate for Petitioners : Mr. Salunke V. D.

AGP for Respondents-State : Mr. A.B.Chate.

Advocate for Respondent No.1 : Mr. P. R.Katneshwarkar h/f Mr.
V. P. Kadam.

Advocate for Applicants in CA : Mr. R.J.Nirmal.

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CORAM : V. K. JADHAV, J.

DATE : 04.03.2020

PER COURT :-

1. By consent, this Writ Petition can be disposed off.
2. The learned counsel for the respective parties agree and accept that when the Divisional Commissioner, Aurangabad has

decided the appeal in Case No.1994/WTN/ APP/1 filed by the present respondent No.1, in terms of the pre-amended provisions of Section 2-A of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 (herein after referred to as 'the Act'), the Commissioner has no jurisdiction and the appeal against the order passed by the Deputy Collector was to be heard and decided by the State Government. In view of the same, the order passed by the Divisional Commissioner in the aforesaid appeal on 17.05.1996 is without jurisdiction. The said order passed by the Divisional Commissioner, Aurangabad came to be challenged by the petitioners herein in the Writ Petition No.2992 of 1996. This Court (Coram : R.M.Borde, J.) by judgment and order dated 03.02.2009 quashed and set aside the order passed by the Divisional Commissioner, Aurangabad, dated 17.05.1996 with a liberty to the respondent in the Writ Petition to present an appeal to the State Government. Before that, on 31.01.2007, Section 2-A Sub Section 2-(i)(ii) of the Act came to be amended and the appeal as against the order passed by the Collector has to be challenged before the Divisional Commissioner. However, while disposing of the Writ Petition No.2992 of 1996 on

03.02.2009, this amendment was not brought to the notice of the Court, by either of the parties. Consequently, as directed by this Court in the Writ Petition No.2992 of 1996, the Hon'ble Minister despite the amendment brought to his notice, heard the matter and by order dated 19.09.2017 decided the Appeal No.2015/*Pra.Kra.240/J-7*. In view of the said amendment dated 31.01.2007 to Section 2-A Sub Section 2(i) and (ii) of the Act, the order passed by the Minister is also without jurisdiction. Both the learned counsel appearing for the respective parties thus accept the legal position that the matter now should go before the Divisional Commissioner, Aurangabad.

3. In view of the same, the only way left is to restore the Appeal bearing Case No.1994/WTN/APP/1 before the Divisional Commissioner, Aurangabad with certain directions to dispose off the same in a time bound manner. In view of the discussion above, the order is hereby quashed and set aside. Hence, the following order :

ORDER

(I) Writ Petition is hereby allowed.

(II) The impugned judgment and order dated 19.09.2017 passed by the Hon'ble Minister in Appeal No.2015/*Pra.Kra.240/J-7*, is hereby quashed and set aside.

(III) Needless to say that at this point of time, the earlier order dated 17.05.1996 passed by the Divisional Commissioner, Aurangabad in case No.1994/WTN/APP/1, the order is already set aside and the said order is no more existence.

(IV) The appeal No.1994/WTN/APP/1 is hereby restored to the file of the Divisional Commissioner, Aurangabad with the following directions :

- (a) The parties shall appear before the Divisional Commissioner, Aurangabad on 03.04.2020.
- (b) The learned Divisional Commissioner shall disposed off the appeal within two (2) months from the date of appearance of the parties.
- (c) It is hereby made clear that no notice again required to be issued against the parties.
- (d) The learned Divisional Commissioner shall decide the appeal on its own merits in

accordance with law without influenced by the earlier orders.

- (e) The parties shall co-operate the learned Divisional Commissioner, Aurangabad to dispose off the appeal in a time bound manner as directed by this Court.

(V) Writ petition is accordingly disposed off.

(VI) In view of disposal of the Writ Petition, nothing survives in Civil Application No.11575/2018. Civil Application is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-