

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14364 OF 2016

Kamlakar Dhondiram Bhosale

...Petitioner

V/s.

Dadu Sakhoba Dabholkar (since decd)
through Lrs. And Ors.

...Respondents

Mr. Drupad Patil i/by. Mr. N.S. Pansare, for the Petitioner.

Mr. Chetan G. Patil, for Respondents No.1 A to 1 D and 3A to 3D.

CORAM : SANDEEP V. MARNE, J.

Dated : 14 September 2023.

P.C. :

1. It appears that Respondent No.2 has died during the pendency of the present petition. Leave granted to bring on record the legal representatives of Respondent No.2. Amendment to be carried out forthwith.

2. Mr. Chetan Patil, the learned counsel appearing for Respondents No.1 and 3 submits that he shall appear on behalf of newly added heirs of Respondent No.2 also.

3. By this petition, Petitioner challenges order dated 31 August 2016 by which application filed for restoration of Revision Application No. 71/1998 has been rejected by the Maharashtra Revenue Tribunal.

4. It appears that Petitioner-Kamlakar alongwith Madhukar had filed an application before the Tehsildar under the provisions of Section 32-O and 32-G of the Bombay Tenancy and Agricultural Lands Act. To those proceedings, members of Chandarkar Family were impleaded as Respondents. The Tehsildar allowed the application by order dated 2 March 1996 issuing a declaration that said Kamlakar Bhosale and Madhukar Katale have purchased half share of land bearing Gat No.410, Village-Hinjole, Taluka-Panhala, District-Kolhapur.

5. Dadu Sakhoba Dabholkar, Sakharam Balu Mahadik and Balu Babu Dabholkar filed RTS Appeal No. 39/1996 before the Sub-Divisional Officer, Kolhapur (**SDO**) challenging Tehsildar's decision dated 2 March 1996. They submitted that they were deliberately kept out of the proceedings filed before the Tehsildar and the order dated 2 March 1996 was passed without granting them any opportunity of hearing. SDO accepted the said submission and passed order dated 14 May 1998 setting aside the order of the Tehsildar dated 2 March 1996. Tehsildar's order is set aside essentially on account of the fact that the said Dadu Sakhoba Dabholkar, Sakharam Balu Mahadik and Balu Babu Dabholkar were

not impleaded as parties to the proceedings before the Tehsildar. SDO's Order became subject matter of challenge before the Tribunal in Revision Application No. 71/1998. Petitioners committed repeated defaults by remaining absent on several dates in the Revision Application. Therefore, on 18 December 2015, the Tribunal was left with no other alternative but to dismiss the Revision in default. On 12 January 2016, an application was filed seeking restoration of the revision. By order dated 31 August 2016, the Tribunal has proceeded to reject the restoration application.

6. Considering the nature of controversy, I am of the view that the proceedings are required to be restored before the Tribunal. This is particularly because while setting aside the order of the Tehsildar, SDO has not remanded the proceedings to Tehsildar for deciding the same afresh after coming to a conclusion that Dadu Sakhoba Dabholkar, Sakharam Balu Mahadik and Balu Babu Dabholkar, ought to have been impleaded in proceedings before the Tehsildar. The effect of SDO's order puts an end to the entire claim of the Petitioner even when the major error traced by SDO in Tehsildar's order is about failure to implead said Dadu Sakhoba Dabholkar, Sakharam Balu Mahadik and Balu Babu Dabholkar to the proceedings. Ideally, therefore the proceedings need to go back to the Tehsildar so that the rival contentions of the parties are considered for determining their rights. For that purpose, the restoration of proceedings before the Tribunal would be warranted.

7. No doubt, the Petitioner has been extremely casual in prosecuting the Revision before the Tribunal. It was filed in the year 1998 and remained pending for 17 long years. It appears from the order of the Tribunal that there was non-appearance on the part of the Petitioner on seven consecutive dates. It also appears that Petitioner had failed to take steps to bring on record the legal heirs of deceased, Kamal Yashwant Chandurkar. For these defaults on the part of the Petitioner, costs are required to be imposed while restoring the proceedings.

8 . Accordingly, the following order is passed :

(i) Writ Petition is allowed. The order dated 31 August 2016 passed by the Tribunal is set aside.

(ii) The Revision Application No. 71/1998 stands restored on the file of Maharashtra Revenue Tribunal, Pune.

(iii) The Tribunal shall proceed to decide the Revision Application as expeditiously as possible, preferably within a period of two months from today.

(iv) Petitioner shall not seek any adjournment before the Tribunal.

(v) Petitioner to pay costs of Rs.50,000/- to Respondents No.1 to 3. A Demand Draft of costs to be handed over to Mr. Chetan Patil,

learned counsel for Respondents No.1 to 3, drawn in the name of one of the Respondents suggested by him, within a period of two weeks from today. The payment of costs shall be a condition precedent for restoration of proceedings before the Maharashtra Revenue Tribunal, Pune.

(vi) The parties to appear before the Maharashtra Revenue Tribunal on 25 September 2023.

(vii) All contentions of the parties are kept open.

SANDEEP V. MARNE, J.