

VRJ

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

**WRIT PETITION NO.7033 OF 2023
WITH
INTERIM APPLICATION NO.15510 OF 2023
IN
WRIT PETITION NO.7033 OF 2023**

VAIBHAV
RAMESH
JADHAV
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VAIBHAV RAMESH
JADHAV
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Kalavati Maruti Gavali & Ors. ... Petitioners
V/s.
Valubai Laxman Gaikwad & Ors. ... Respondents

Mr. Sunil G. Karandikar with Dhananjay A. Utture i/by
Mr. Prajakt Arjunwadkar for the petitioners/applicants.

Mr. Girish S. Godbole, Senior Advocate with Mr.
Kaustubh Thipsay for respondent Nos.1 to 5.

Mr. Anand S. Patil for respondent No.9.

CORAM : AMIT BORKAR, J.

DATED : APRIL 7, 2025

PC.:

1. By way of the present writ petition instituted under Article 227 of the Constitution of India, the petitioners are impugning the legality, validity, and propriety of the judgment and order dated 24th February 2023 passed by the Maharashtra Revenue Tribunal, Pune (hereinafter referred to as "MRT") in Tenancy Revision Application No. KP/89/2018, whereby the judgment and order passed by the Sub-Divisional Officer, Ichalkaranji Division, Ichalkaranji (hereinafter referred to as "the SDO") in Tenancy Appeal No.1 of 2014 came to be quashed and set aside. The

proceedings arise out of an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the BTAL Act”).

2. The facts giving rise to the filing of the present petition, as are necessary for deciding the controversy involved, are set out hereinafter:

3. The agricultural lands bearing Gat No. 736 admeasuring 3 Hectares 13 Ares and Gat No. 736/B admeasuring 0.81 Are, both situate at Village Narande, Taluka Hatkanangale, District Kolhapur, are the subject matter of dispute in the present petition. According to the petitioners, the suit properties were originally allotted to one Malharrao Bhujingrao Bhosale as watan lands (Sanadi Inam). It is the case of the petitioners that the predecessor of the petitioners, namely, deceased Krishna Govind Gavali, was inducted as a tenant in the suit properties in the year 1945-1946 and thereafter continued to cultivate the said lands as a protected tenant. Consequently, the name of Krishna Govind Gavali came to be recorded in the revenue records as tenant in respect of the suit properties.

4. On 14th February 1955, in view of Section 4 of the Bombay Inferior Village Watans Abolition Act, 1958, inferior watans including "Inami Sanad" came to be abolished. It further appears that the Merged Territories (Miscellaneous Alienations Abolition) Act, 1955 also had a bearing on the watan lands. It appears that the respondents filed an application before the Tahsildar, Hatkanangale, District Kolhapur, bearing No.

Tenancy/SR/93/2014, seeking a declaration under Section 70(b) of the BTAL Act that Krishna Govind Gavali was not a tenant in respect of the suit properties. By judgment and order dated 18th December 2014, the Tahsildar, Hatkanangale, allowed the said application and directed deletion of the name of Krishna Govind Gavali from the revenue record, holding that he was not a tenant in respect of the suit properties.

5. Aggrieved by the said order, the petitioners preferred Tenancy Appeal No. 1 of 2014 before the Sub-Divisional Officer, Ichalkaranji Division, Ichalkaranji. By judgment and order dated 9th November 2017, the learned SDO allowed the said appeal and set aside the order of the Tahsildar. Being aggrieved thereby, the respondents preferred Tenancy Revision Application No. 89 of 2018 before the MRT. By the impugned judgment and order, the MRT allowed the said revision application and quashed and set aside the judgment of the SDO. Hence, the petitioners have approached this Court by way of the present writ petition.

6. Mr. Karandikar, learned advocate appearing for the petitioners, has invited my attention to the order passed by the Tahsildar, Hatkanangale, which records a finding that Krishna Govind Gavali was not a tenant in respect of the suit properties. He further invited my attention to the concluding observation in the impugned order, which makes a mention that the said order shall be without prejudice to the rights of the known and unknown legal representatives of Krishna Govind Gavali. He has also drawn my attention to the proceedings initiated on 7th September 1998, wherein a compromise was arrived at between the legal

representatives of Krishna Govind Gavali and the applicant therein. He submitted that the said compromise clearly records the fact that Krishna Govind Gavali was not alive as on 7th September 1998, and that the predecessor of the respondents was a party to the said compromise. He submitted that once it is established that Krishna Govind Gavali was deceased prior to initiation of proceedings before the Tahsildar, the order passed against a dead person is a nullity in the eyes of law and confers no rights on any person. He thus submitted that the proceedings initiated against deceased Krishna Govind Gavali are vitiated ab initio and liable to be set aside.

7. Per contra, Mr. Godbole, learned Senior Advocate appearing for the respondents, has opposed the petition. He submitted that despite having an option to seek review of the order of the Tahsildar on the ground that it was passed against a dead person, the petitioners elected to file a statutory appeal before the SDO and contested the matter on merits. He submitted that having contested the matter on merits, the petitioners have waived their right to object to the proceedings on the ground of want of notice or opportunity of hearing, and cannot now be permitted to turn around and raise such a contention. He further submitted that the conduct of the petitioners amounts to approbation and reprobation, which is impermissible in law. He therefore submitted that the appellate authority as well as the revisional authority have rightly considered the matter on merits, and the petitioners are estopped from raising a plea contrary to their conduct before the authorities below. He, therefore, submitted that no case for

interference is made out and the petition deserves to be dismissed.

8. I have carefully considered the rival submissions advanced by the learned counsel for the respective parties. Upon perusal of the compromise order dated 7th September 1998 passed by the Tahsildar, it is evident that the predecessor of the respondents was the applicant in the said proceedings. It is equally evident that on the date of filing of the application before the Tahsildar in the year 2014, the original applicant No.1 was aware of the death of Krishna Govind Gavali.

9. In law, it is well settled that any proceedings initiated against a dead person are a nullity and void ab initio. Once it is demonstrated that initiation of proceedings is against a dead person, the defect goes to the root of the matter. Although in certain cases such a defect can be remedied if brought to the notice of the authority prior to filing of reply or before commencement of hearing, however, in the present case, despite having full knowledge about the death of Krishna Govind Gavali, the original applicant No.1 proceeded to prosecute the application without impleading the legal representatives of the deceased opponent and secured an order on merits.

10. It is well settled that a decree or an order passed against a dead person without bringing his legal representatives on record is a nullity. Similarly, in *Ashok Transport Agency v. Awadhesh Kumar and Another*, (1998) 5 SCC 567, the Hon'ble Court held that the executing court has rightly taken the view that the suit having been filed against the dead person, the decree was a nullity and

could not be executed. In light of the aforesaid position, in my considered opinion, the order dated 18th December 2014 passed by the Tahsildar is a nullity and void in the eyes of law.

11. Furthermore, as noted above, applicant No.1 was aware of the death of Krishna Govind Gavali at the time of filing of the proceedings. Despite such knowledge, by suppressing the material fact, he initiated the tenancy proceedings in 2014. Moreover, as rightly pointed out by Mr. Karandikar, learned Advocate for the petitioners, the last observation in the order dated 18th December 2014 passed by the Tahsildar, whereby it is recorded that the order is without prejudice to the rights of known and unknown legal representatives of Krishna Govind Gavali, clearly indicates that the Tahsildar was aware that the original opponent was deceased.

12. It is well settled that suppression of material facts amounts to abuse of the process of law and any order obtained by suppression of facts is liable to be set aside. Further, it is equally well established that suppression of a material fact, namely, the death of a party, and proceeding without bringing it to the notice of the authority, constitutes a fraud upon the Court or the authority and renders the order vulnerable, as laid down in *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1.

13. In my considered opinion, therefore, the initiation of the proceedings and the consequential order dated 18th December 2014 passed by the Tahsildar are wholly unsustainable, being against a dead person, and are thus a nullity in the eyes of law. It is now well settled that any judicial or quasi-judicial proceedings

initiated against a dead person, without bringing on record his legal representatives, are rendered void ab initio. Such an order has no existence in the eyes of law and cannot be permitted to stand.

14. In this context, useful reference can be made to the decision of the Hon'ble Supreme Court in *Gurnam Singh v. Gurbachan Kaur*, (2017) 13 SCC 414, wherein at page 419, it has been observed as under:

"21. It is a fundamental principle of law laid down by this Court in *Kiran Singh v. Chaman Paswan*, AIR 1954 SC 340, that a decree passed by the Court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings whenever such decree is sought to be enforced by the decree-holder. The reason is that the defect of this nature affects the very authority of the Court in passing such decree and goes to the root of the case.

This principle, in our considered opinion, squarely applies to this case because it is a settled principle of law that the decree passed by a Court for or against a dead person is a 'nullity' (see *N. Jayaram Reddy v. LAO*, (1979) 3 SCC 578; *Ashok Transport Agency v. Awadhesh Kumar*, (1998) 5 SCC 567; and *Amba Bai v. Gopal*, (2001) 5 SCC 570)."

15. The ratio laid down by the Hon'ble Supreme Court clearly enunciates that an order or decree passed against a deceased person without the legal representatives being on record is a nullity and such defect affects the very root of the jurisdiction exercised.

16. Applying the aforesaid settled position of law to the facts of the present case, it is clear that since the proceedings were initiated against a dead person, and the Tahsildar proceeded to

pass an order without there being any representation by the legal heirs of deceased Krishna Govind Gavali, the entire proceedings stand vitiated. The defect is incurable and cannot be treated as a mere irregularity.

17. An order which is a nullity can be challenged even in collateral proceedings or wherever it is sought to be relied upon, as held by the Hon'ble Supreme Court in *Kiran Singh and Ors. v. Chaman Paswan and Ors.*, AIR 1954 SC 340, wherein it was held:

"It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings."

18. Thus, such being the degree of invalidity of the impugned order, mere participation by the petitioners in the appellate proceedings without specifically raising the said objection would not amount to waiver nor would disentitle them from raising the plea of nullity subsequently. The doctrine of approbate and reprobate, which prevents a party from blowing hot and cold at the same time, would have no application in the present case where the foundational defect pertains to jurisdiction and not to mere procedural irregularity. In this regard, it is pertinent to note that jurisdictional defects cannot be cured by consent or waiver, and the principle of estoppel would not apply where the authority lacked inherent jurisdiction.

19. Insofar as the submission advanced by Mr. Godbole, learned Senior Advocate for the respondents, that the Tahsildar had published a public notice before passing the impugned order and

that the petitioners did not respond to such notice thereby forfeiting their right, is concerned, Mr. Karandikar, learned Advocate for the petitioners has rightly pointed out that the public notice referred to in the order of the Tahsildar is dated 31st October 2014, whereas it came to be published only on 1st November 2014, i.e., one day after the date fixed by the Tahsildar for hearing.

20. The principles of natural justice must be adhered to strictly and procedural irregularities which result in prejudice must be addressed. The notice having been published after the date fixed for hearing defeats the very purpose of issuance of notice. Hence, no adverse inference can be drawn against the petitioners on the said count. In my considered view, the Maharashtra Revenue Tribunal, Pune, was not justified in adjudicating the matter on merits. The MRT ought to have first examined the validity of the order of the Tahsildar in light of the aforesaid jurisdictional defect and having failed to do so, the impugned order cannot be sustained.

21. In view of the aforesaid settled position of law, I am of the firm view that the impugned order passed by the Tahsildar dated 18th December 2014, as well as the impugned order passed by the Maharashtra Revenue Tribunal dated 24th February 2023, are both unsustainable and liable to be set aside.

22. Hence, the following order is passed:

ORDER

(i) The impugned judgment and order dated 24th February

2023 passed by the Maharashtra Revenue Tribunal, Pune in Tenancy Revision Application No. KP/89/2018 is quashed and set aside.

(ii) The proceedings are remanded to the Tahsildar, Hatkanangale, Kolhapur. The Tahsildar shall conduct a fresh inquiry in relation to Application bearing No. Tenancy/SR/93/2014 after giving due notice and opportunity of hearing to the legal representatives of deceased Krishna Govind Gavali and the respondents, and shall pass appropriate orders in accordance with law.

23. With the aforesaid directions, the writ petition stands disposed of. There shall be no order as to costs.

24. At this stage, learned Senior Advocate Mr. Godbole appearing on behalf of the respondents seeks stay of operation of this order. However, considering the fact that the original applicant No.1 was fully aware of the death of the opponent and yet suppressed such fact and proceeded to obtain an order, I am not inclined to grant any stay. Hence, the request for stay stands rejected.

25. It is clarified that it shall be open for the parties to produce fresh documentary and oral evidence before the Tahsildar during the fresh inquiry.

26. All pending interlocutory applications, if any, stand disposed of.

(AMIT BORKAR, J.)