

**BEFORE THE MEMBER (SHRI V.K. KADAM), MAHARASHTRA
REVENUE TRIBUNAL, AURANGABAD**

Revision No. No. 10/B/2021/Dh

1. Anisoddin Naziboddin Kazi **Revision Petitioners**
Age -70 yrs, Occu- Pensioner
R/o. Plot No. 44,
Beside Masjid Phale hударin
Millat Nagar, Dhule
Tq. & Dist. Dhule.
2. Raisoddin Naziboddin Kazi
Age -61 yrs, Occu- Pensioner
R/o. Plot No. 44,
Beside Masjid Phale hударin
Millat Nagar, Dhule
Tq. & Dist. Dhule.
3. Sultana Begam Iqbal Ali Sayyad (deceased)
Through L.R's
- A) Mauzam Ali Iqbal Ali Sayyad
Age- 59 yrs, Occu-Doctor
R/o. Plot No. 13-B, Chalisgaon Road,
Jai Shankar Colony, Dhule
Tq. & Dist. Dhule.
- B) Noor Jahan Sadique Ali Hanfi
Age – 54 yrs, Occu-Household,
R/o.401/1/A Momin Ali, Chopda
Tq. Chopda Dist. Jalgaon.
- C) Ayesha Rishtaq Ali Kadri
Age -51 yrs, Occu- Household,
R/o. Jilani Manzil,

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3rd Floor, Room No. 5,
Ram Baugh, Lane No. 1,
Smart Kids School,
Kalyan, Dist. Thane.

- D) Maqsood Ali Iqbal Ali Sayyad
Age- 50 yrs, Occu-Business,
R/o. H. No. 3452,
Galli No.1, Iqbal Road,
Near Tahsil Office, Dhule
Tq. & Dist. Dhule
- E) Kausar Jahan Mohammad Tarukh Kazi
Age- 47 yrs, Occu- Household,
R/o. Plot No. 22-A, Kazi Nagar, Shirpur,
Tq. Shirpur, Dist. Dhule.
- F) Sayyad Asad Ali Iqbal Ali Sayyad
Age- 42 yrs, Occu- Business,
R/o. Chalisgaon,
Jai Shankar Colony,
Plot No. 13, Dhule
Tq. & Dist. Dhule.
- G) Raushan Jahan Asifoddini Kazi
Age- 42 yrs, Occu-Household,
R/o. Millat Nagar,
Beside Fhala Hudarini Masjid,
Near Hajar Kholi, Dhule
Tq. & Dist. Dhule.

4. Rehana Begum Muziboddin Kazi (deceased)
Through L.R's

- 4-A) Amena Mohammad Hashim Shaikh
Age- 49 yrs, Occu- Household
R/o. 284, Patel wadi, Court Road,

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Nandurbar,
Tq. & Dist. Nandurbar.

- 4-B) Kazi Muzzamiloddin Muziboddin
Age- 48 yrs, Occu-Agriculture,
R/o. Plot No. 6-B,
Mehroon Nashiman Colony, Jalgaon,
Tq. & Dist. Jalgaon
- 4-C) Arifoddin Muziboddin Kazi
Age- 44 yrs, Occu-Agriculture,
R/o. 128/14, Western Railway Colony,
Kherwadi Road, Bandra East, Mumbai
- 4-D) Kadri Shahin Basit Ali
Age- 42 yrs, Occu- Household,
KGN Colony, Shahada Tq. Shahada
Dist. Nandurbar
- 4-E) Kazi Asiffodin Muziboddin
Age- 32 yrs, Occu- Business
R/o. Plot No. 4, Chalisgaon Road,
Near Sarvjanik Hospital,
Garib Nawaj Nagar, Dhule
Tq. & Dist. Dhule
- 4-F) Amiroddin Muziboddin Kazi
Age- 31 yrs, occu- Business,
R/o. as above
- 4-G) Nusrat Muziboddin Kazi
Age- 29 yrs, Occu- Household,
R/o.128/14, Western Railway Colony,
Kherwadi Road,
Bandra East, Mumbai.

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5. Farhana Begum Badruddin Kazi (deceased)
Through L.R's

- 5-A) Asiya Mujahid Inamdar
Age- 45 yrs, Occu- Household,
R/o. Samsan Apartment, 15th Floor
Opp. J.J. Hospital, Gate No.2
Mumbai
- 5-B) Kazi Naziya Parveen Wadud
Age-39 yrs, Occu- Household
R/o. 61/B, Chalisgaon Road, Behind
Mohammadi Masjid, Dhule
Tq. & Dist. Dhule.
- 5-C) Kazi Minhaz Ahemad Badruddin
Age- 37 yrs, Occu-Business,
R/o. Plot No.44, Wadji Road, Milat Nagar
Dhule, Tq. & Dist. Dhule.
- 5-D) Fatema Saroj Majid Kazi
Age- 45 yrs, Occu- Household
R/o. 61/B, Avishkar Colony, Lane No.4
Behind Masjid Dhule
Tq. & Dist. Dhule

6. Arfana Begum Alimoddin Kazi
Age- 72 yrs, Occu- Household
R/o. Backside of Phale Hudarini Masjid
Plot No. 44, Millat Nagar, Dhule
Tq. & Dist. Dhule

7. Rukhsana Begum Raufoddin Kazi
Age -61 yrs, Occu- Household
R/o. as above

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V/s.

1. Ramdas Vedu Bhoi **Respondent**
Age- 58 yrs, Occu-Agriculture
R/o. Thalner, Tq. Shirpur,
Dist. Dhule

Shri J.S. Gavane advocate for petitioners.
Shri R.P Mote advocate for respondent.

**CLAIM : - Revision Petition U/Section 76 of Bombay
Tenancy & Agricultural Lands Act 1948.**

: JUDGEMENT :

(Delivered on 19/12/2022)

1. Being aggrieved and dissatisfied by the judgment and order passed by Sub Divisional Officer Shirpur in Case No.R.T.S./ Appeal/Application/08/2020 dated 07/01/2021 the petitioner have preferred this revision petition on the following grounds. That the order passed by the Courts below are wrong, illegal and against the provisions of law. The Tahsildar Shirpur has totally failed to consider that the present petitioner filed the application before the Collector under Section 84 of the Bombay Tenancy & Agricultural Lands Act for restoration of possession and Collector Dhule by order dated 08/09/2017 remanded the matter to the Tahsildar Shirpur for conducting fresh enquiry. Further it is clear that after remand order by the Collector the proceeding was initiated before

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the Tahsildar Shirpur and during the pendency of the proceeding the respondent no.1 Vishram Kadu Bhoi was expired on 15/11/2017 and pursis was filed by the advocate for the respondent before the Tahsildar and the advocate for the petitioner has also requested the case may be abated against the respondent no.1 Vishram Vedu Bhoi and case may be conducted against the respondent no. 2 Ramdas Vedu Bho. But the Courts below have failed to consider this aspect and came to the wrong conclusion.

2. It is submitted that Tahsildar Shirpur rejected the application of the petitioner on the ground that in view of the provisions of Section 18(3) of the Mamlatdar Court Act the case shall be closed on account of not bringing legal heirs. The said observation of the Tahsildar is totally against the provisions of law. The said provisions of the Mamlatdar Court Act is in respect of the provisions of the Section 5 subsection of the 3 of the Mamlatdar Court Act and the said proceeding did not apply to the proceeding commence under section the provisions of B.T. & A.L. Act 1948. It is settled position of law during the pendency of the application under the Tenancy Law and there are more respondent and any one of respondent was expired then the application in respect of the expired respondent was abated and the suit shall be proceeded against the remaining respondent. In the present case the advocate for the petitioners have specifically contended before Tahsildar that in respect of the respondent no. 1 Vishram Vedu Bhoi the case was abated and remaining respondent Ramdas Vedu Bhoi the case may

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be conducted. But the Court below has failed to consider this aspect.

3. It is submitted that it is settled position of law under the tenancy law if the proceedings was initiated before the Tahsildar and some of the respondent was expired if they have not any legal heirs then the case may be abated against the expired respondent and it is the duty of Tahsildar to conduct the case against the remaining respondent. Therefore it is clear that the whole case would not be abated. Both court below have failed to consider that the present petitioner have filed application before Tahsildar, that, respondent no.1 Vishram Vedu Bho was expired on 15/11/2017 Tahsildar Shirpur has totally failed to consider legal provision and came to wrong conclusion and wrongly dismissed the case under the provisions of Section 18(3) of the Mamlatdars Court Act 1906.
4. Both the Courts below have totally failed to consider that initially the suit land was cultivated by Polad Gabbu Rajput. Thereafter the enquiry was conducted by the Tahsildar under Section 32 G of the Tenancy Act and held that Polad Gabbu Rajput was not a tenant of the suit land and as per the decision of the Tahsildar the name of the Polad Gabbu Rajput was deleted by way of mutation entry no. 1694 from revenue record on 13/01/1962. From the record it is clear that Vedu Sukka Bhoi or present respondent or Vishram Vedu Bhoi was not in possession of the suit land on tillers day i.e. 01/04/1957. On the contrary they are labourer and for the first time their name was shown in 7/12

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extract in cultivation column for the year 1966-67 which is wrong and illegal. More over there is no any entry was sanctioned that they are tenant of the suit land. It is further submitted that both the Courts below have totally failed to consider that there is no any declaration in the name of the respondent as a tenant. Moreover in view of the order passed by Deputy Collector Dated 07/07/1973 the appeal of the present petitioners was allowed and order of the Tahsildar Shirpur dated 25/05/1971 declaring tenant to the respondent was set aside and thereafter there is no any declaration order passed by the Tahsildar in favour of the respondent. Both the Courts below have totally failed to consider that respondent no. 1 Vishram Vedu Bhoi and respondent no. 2 Ramdas Vedu Bhoi are cultivating the suit land and respondent no. 1 Vishram Vedu Bhoi was expired on 15/11/2017 both the Courts below have failed to consider that if there are more than two respondents and right to suit survive and any one of them was died than the case abated only against the deceased respondent and not the whole case was abated. Therefore the order passed by both the Courts are wrong and illegal. The present respondent is illegally in possession and therefore the possession of the suit land is required to be restored to the present petitioners. Lastly prayed to allow the petition and quashed and set aside the order passed by S.D.O. Shirpur and dated 07/01/2021 and order passed by Tahsildar Shirpur dated 31/12/2019.

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5. The respondent appeared and resisted the revision petition contending inter alia that the order passed by Tahsidlar as well as the order passed by S.D.O. Shirpur is proper, legal and maintainable in the eyes of law, lastly to prayed dismiss the revision petition.
6. Shri J.S. Gavane advocate for the petitioner and Shri R.P. Mote advocate for respondent in considerable length.
7. On the submissions advance by both the parties. The following points arise for my determination and findings are given against each point for the reasons below.

Sr.No.	Points	Findings
1.	Whether the judgment and order passed by Sub Divisional Officer, Shirpur dated 07/01/2021 in RTS/Appeal/Application/08/2020 and order passed by Tahsildar Shirpur dated 31/12/2019 in Tenancy Case No. 748/2017 are proper, legal and maintainable in the eyes of law?	Negative
2.	Whether the interference at the hands of this court/tribunal is warranted in the order/ judgment passed by Sub Divisional Officer Shirpur dated 07/01/2021 in RTS/Appeal/Application/08/2022 and order passed by Tahsildar Shirpur dated 31/12/2019 in Tenancy Case No. 748/2017?	Affirmative
3.	What order?	As per final order

Reasons -

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8. As to point no.1 & 2- The points no. 1 & 2 are being interlinked therefore it can be dealt by giving common reasons. According to the petitioners the land survey no. 142 now gat no. 403 admeasuring area 1 hectare 89 R Potkharab 18 R, land survey no. 146 now gat no. 431 admeasuring area 1 hectare 67 R Potkharab 1 hectare 11 R situated at village Manjrod Tq. Shirpur Dist. Dhule belong to Naziboddin Kazi and thereafter the name of the present petitioner are shown in ownership column by way of mutation entry. That the present petitioner no.1 Anisoddin Nazimoddin Kazi filed R.C.S.No.162/1968 before Civil Judge Junior Division Shirpur for restoration of possession of the suit land. In the Civil Court father of the respondent namely Vedu Sukka Bhoi filed say and contended that he was in possession of the suit land on the basis of tenancy right and therefore his possession was not illegal. Thereafter the Civil Judge, Junior Division Shirpur had made a reference under Section 85-A of the Bombay Tenancy & Agricultural Lands Act 1948 to the Tahsildar Shirpur and directed to decide the issue in respect of tenancy. The Tahsildar Shirpur by order dated 25/05/1971 held that Vedu Sukka Bhoi cultivating the suit land as a tenant and answered the reference in affirmative. Thereafter the present petitioner no. 1 Anisoddin Kazi filed appeal before Deputy Collector Dhule and the Deputy Collector Dhule by order dated 07/03/1973 allowed the appeal and held that the order of Tahsildar Shirpur declaring Vedu Sukka Bhoi as a tenant is set aside and it is remanded back to the Tahsildar Shirpur for fresh

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enquiry. In the meanwhile the Civil Suit was dismissed in default for want of prosecution. Thereafter the Tahsildar Shirpur did not conduct any enquiry and closed the case. Thereafter the present petitioner have filed application under Section 84 of the B.T. & A.L. Act 1948 before the Collector Dhule for restoration of possession of the land survey no. 142 now gat no. 403 admeasuring 1 hectare 89 R Potkharab 18 R, land survey no. 146 now gat no. 431 admeasuring 1 H 67 R potkharab 1 hectare 11 R situated at Manjrod Tq. Shirpur Dist. Dhule. That before the Collector petitioners have made party to Vishram Vedu Bhoi as respondent no. 1 and Ramdas Vedu Bhoi respondent no. 2, after hearing both the parties the Collector by order dated 08/09/2017 disposed off the appeal and directed the Tahsildar Shirpur after conducting the enquiry given decision.

9. It is further submitted that, Tahsildar Shirpur made inquiry in the matter, during the pendency of the matter before Tahsildar Shirpur respondent no.1 Vishram Vedu Bhoi was expired on 15/11/2017 and the advocate for the petitioner inform to the court that he was not having any legal heirs and therefore the case was abated against the respondent no. 1 and proceeded. Thereafter hearing both the parties Tahsildar Shirpur by order dated 31/12/2019 held that the application was rejected on the ground that in view of the provisions of Section 18(3) of the Mamlatdar Court Act 1906 and closed the case. That against the order of the Tahsildar Shipur dated 31/12/2019 the present petitioners have

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filed appeal before S.D.O. Shirpur. After hearing both the parties S.D.O. Shirpur by order dated 07/01/2021 rejected the appeal and confirmed the order passed by Tahsildar Shirpur.

10. On going through the entire submissions, pleading and record it reveals that the petitioner no. 1 Anisoddin Kazi has filed Regular Civil Suit No. 162/1968 before Civil Judge , Junior Division for restoration of possession of the suit land and in the said suit Vedu Sukka Bhoi has taken a stand that he is tenant of the suit land hence the Civil Judge Junior Division has made reference under Section 85 A of the B.T. & A.L. Act Tahsildar was directed to make the enquiry regarding the tenancy, it has further come on record that the petitioners have filed application under Section 84 of the B.P. & A.L. Act before Collector Dhule for possession of the suit land and during the pendency the respondent no. 1 Vishram Vedu Bhoi has expired on 15/11/2017 the Tahsildar Shirpur as well as S.D.O. Shirpur both have to abate the proceeding against only respondent no. 1 Vishram Vedu Bhoi and shall confirm the proceeding against the respondent no. 2 Ramdas Vedu Bho but both have failed to conduct the enquiry against the remaining respondent, both the courts below have failed to consider that if there are more than two respondents and right to sue survive and any one of them was died than the case was abated only against the deceased respondent and not the whole case abated. Therefore the order passed by both the Courts below are wrong and illegal. The Ld. advocate Shri J.S. Gavane has placed his reliance on following

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judicial precedent in the case of Shankar S/o. Dattu Dhangar....
Petitioner V/s. Dhondopant Narayan Kulkarni, deceased by L.R's &
others reported in 1998(4) Bom. C.R. Page 764 Placitum (B)-

*Placitum (B)- Hyderabad Tenancy and Agricultural
Lands Act, 1950, Secs.44 & 32(2) - Mamlatdars Court Act,
1906, Sec.18(3)- Limitation Act, 1963, Sec.5- Code of Civil
Procedure, 1908, O.29, R1- Abatement of appeal- In tenancy
case landlords application for setting aside abatement of
appeal, allowed by the Collector- Contention that section 5 of
the Limitation Act did not apply to proceeding under
Mamlatdars Court Act- Held, section 5 of the Limitation Act
applies to all Acts unless expressly excluded by the statute.
Dy. Collector was justified in setting aside the abatement.*

On going through the keen observations of the facts of the
cited judicial precedents, it appears that it is applicable to the case
in hand.

11. Shri J.S. Gavane advocate for the petitioner further placed his
reliance on the following judicial precedent in case of Perumon
Bhagvathy Devaswom, Perinadu Village V/s. Bhargavi Amma (dead)
by L.R's & others reported in 2008 DGLS (SC) page 914-

*Placitum (A) - Code of Civil Procedure, 1908- Order 22
Rule 11 and Order 22 Rule 4(1) r/w Section 100- Civil Law-
Second Appeal- Abatement of appeal qua death of*

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respondent- Setting aside abatement of appeal vis-avis Impleadment of L.Rs of deceased respondent – Death of respondent shall not cause the appeal to abate if right to sue survives- Where a respondent dies and the right to sue does not survive against the surviving respondents alone or where the sole respondent dies and the right to sue survives, on application made in that behalf, the L.R's of deceased respondent to be made party to appeal and appeal shall be proceeded against – If no application is made, the appeal shall abate against the deceased respondent(Paras 4.1 & 4.2).

On going through the keen observations of the facts of the cited judicial precedent it appears that it is applicable to the case in hand.

12. It appears that both Courts below have totally failed to consider that respondent no.1 Vishram Vedu Bhoi and respondent no.2 Ramdas Vedu Bhoi are cultivating the suit land and respondent no. Vishram Bhoi expired on 15/11/2017 so the Tahsidlar Shirpur as well as S.D.O. Shirpur have to conduct the matter against the respondent no.2 Ramdas Vedu Bhoi but they have abated the matter totally. The said orders of the Tahsildar Shirpur as well as S.D.O. Shirpur are illegal, wrong and not maintainable in the eyes of law. Thereafter interference at the hands of this Court/Tribunal is

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warranted I therefore answered point no. 1 in the negative and point no. 2 in the affirmative.

13. **As to point no. 3 -** Considering the facts and circumstances of the case the Tahsildar Shirpur as well as S.D.O. Shirpur have been not conducted the enquiry, so the matter is to be remanded back to the fresh enquiry. In the result I proceed to pass the following order.

ORDER

1. The Revision petition No. 10/B/2021/Dh is here by partly allowed.
2. The judgment and order passed by Sub Divisional Officer Shirpur dated 07/01/2021 in case No. RTS/Appeal/Application/08/2020 and order passed by Tahsildar Shirpur dated 31/12/2019 in tenancy case no. 748/2017 are here by quashed and set aside.
3. The matter is remanded back to the Tahsildar Shirpur for making a fresh enquiry by issuing notices to both parties. The parties are here by directed to appear before Tahsidlar on 16/01/2023.
4. No order as to costs.
5. The record and proceeding be sent to the concerned authority immediately.

Place : Aurangabad
Dated : 19/12/2022


19.12.2022
(V.K. Kadam)
Member,
Maharashtra Revenue Tribunal,
Mumbai.

