

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

CIVIL APPLICATION NO.4155 OF 2015
IN
WRIT PETITION NO.4281 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.R.N.Dhorde, Senior counsel for Petitioner.
Mr.S.A.Ambade, Asstt.Govt. Pleader for the State.

**CORAM : S.V.GANGAPURWALA &
A.I.S.CHEEMA, JJ.**
Date : 24.04.2015.

PER COURT :

1. Heard.
2. This is an application for bringing on record the legal heirs of deceased Respondent No.6. Mr.Dhorde, learned Senior counsel submits that the applicant Municipal Council has assailed the order U/s 48 of the Land Acquisition Act, dropping the Acquisition proceedings. The matter is of public importance. The Respondent No.6 died on 16.4.2011. The intimation of the death of Respondent No.6 was received in 2012. The names of the heirs could not be collected due to inadvertence. Some of the Officers of the Municipal Council have retired. The legal heirs of Respondent No.6 could not be brought on record within the stipulated time.

The applicant has also deposited Rs.40,00,000/- (Rupees forty lacs) pursuant to the orders passed by this Court. The learned Senior counsel submits that strictly the provisions of Order XXII Rule 10 of the C.P.C does not apply to the Writ Petitions. The learned Senior counsel relies on the judgment of the Apex Court in a case of **“Puran Singh and others Vs. State of Punjab and others”** reported in **AIR 1996 Supreme Court 1092**.

3. Mr.Dixit, learned Senior counsel for the proposed legal heirs of Respondent No.6 submits that there is total inaction on the part of the petitioner in bringing on record the legal heirs of deceased Respondent No.6. The deceased Respondent No.6 has also filed Writ Petition with regard to the same writ property bearing W.P.No2339/2000. In the said Writ Petition, the application is filed by the L.Rs. of deceased Respondent No.6 to bring themselves on record in the year 2013. Vide order dated 4.3.2014, the said L.Rs. are allowed to be brought on record. The intimation of the death of Respondent No.6 has been given to the petitioner in February 2012. The learned Senior counsel submits that the application does not depict sufficient cause for delay in bringing the L.Rs. of deceased Respondent No.6 on record. There is lack of bonafide on the part of the applicant. Even the amount as directed by this Court has not been deposited by the petitioner. According to the learned Senior counsel, the application being

devoid of any sufficient cause deserves to be rejected. The law of limitation is required to be applied with all its rigour.

4. We have considered the submissions canvassed by learned counsel for respective parties. The present Writ Petition is filed by the Chalisgaon Municipal Council, Chalisgaon, thereby assailing the order passed by the Additional Commissioner U/s 48 of the Land Acquisition Act, thereby releasing the land from the acquisition.

5. The deceased Respondent No.6 has also filed Writ Petition bearing W.P.No.2339/2000, thereby assailing the declaration U/s 6 of the Land Acquisition Act, read with Section 126 of the Maharashtra Regional and Town Planning Act, with other reliefs. Both the petitions since long time were heard together.

6. There is no dispute that the learned Senior counsel for deceased Respondent No.6 has communicated the petitioner about the factum of death of Respondent No.6 in February 2012. Even the legal heirs of deceased Respondent No.6 herein had filed Civil Application in the year 2013 for bringing themselves on record in W.P.No.2339/2000 and the said application is allowed by the Court on 4.3.2014. Considering the dates as culled out above, it is clear that there is delay on the part of the petitioner in bringing on record the legal heirs of deceased Respondent No.6.

7. There can not be any dispute with the proposition that provisions of Order XXII Rule 10 of the C.P.C would not strictly

apply to the Writ Petitions, however, the principles analogous to the same can be made applicable. The Apex Court in a case of **“Puran Singh and others Vs. State of Punjab and others”** referred supra has held that provisions of Civil Procedure Code, more particularly, Order XXII of the C.P.C. are not applicable to writ proceedings. The Apex Court further held that it is incumbent on the part of the petitioner to substitute legal heirs of Respondent within reasonable time. The High Court can consider the facts and circumstances of case for the purpose of condoning delay.

8. It is trite that abatement has to be strictly construed and application for setting aside abatement has to be liberally construed.

9. Whenever a cause for substantial justice and technical considerations are pitted against each other, the cause for substantial justice has to be sub-served.

10. The matter is concerning the release of the property from acquisition. The jurisdiction of the Commissioner, the propriety of the order passed are subject matter of issue in the writ petition. The Writ Petition filed by the original Respondent No.6, challenging the acquisition proceedings is also pending. It can be seen that petitioner has deposited amount of Rs.40,00,000/- (Rupees forty lacs only) as per the order passed. Rs.25,00,000/- (Rupees twenty five lacs) are deposited on 28.11.2003 and an amount of Rs.15,00,000/- (Rupees fifteen lacs only) on 10.11.2003. 11.

Considering the aforesaid aspects of the matter and the facts that the petitioner is autonomous institution, we are inclined to allow the petitioner to bring on record the legal heirs and condone the delay, however, the applicant deserves to be mulct with costs.

12. In the result, we pass the following order :

- a) The application is allowed. The L.Rs. of deceased Respondent No.6 are allowed to be brought on record. The applicant shall pay cost of Rs.25,000/- (Rupees twenty five thousand) to the legal heirs of deceased Respondent No.6 within four (4) weeks. In case the said cost is deposited in this Court, the legal heirs of Respondent No.6 are entitled to withdraw the same.
- b) The Civil Application is accordingly disposed of.

(A . I . S . CHEEMA , J .)

(S . V . GANGAPURWALA , J .)

Dt..24.04.2015.
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