

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.12167 OF 2015
IN
WRIT PETITION NO. 3397 OF 1997

Somnath S/o Namdeo Chavan
died
through LRs
Deepak Somnath Chavan and others Applicants

Versus

Dhule Municipal Council,
Dhule through its Chief Officer Respondent

WITH
CIVIL APPLICATION NO.12169 OF 2015
IN
WRIT PETITION NO. 3397 OF 1997

Jaywant Ananda Bramhane
died
through LRs
Sagar Jaywant Bramhane and others Applicants

Versus

Dhule Municipal Council,
Dhule through its Chief Officer Respondent

WITH
CIVIL APPLICATION NO.12847 OF 2015
IN
WRIT PETITION NO. 3397 OF 1997

Kashinath Raghunath Ahire
died
through LRs
Sahebrao Kashinath Ahire and others Applicants

Versus

Dhule Municipal Council,
Dhule through its Chief Officer Respondent

Mr.N.L. Choudhari advocate for the applicants
Mr.P.V. Barde h/f Mr. S.P.Shah advocate for Respondent

CORAM : **RAVINDRA V. GHUGE, J**

Date : 15th OCTOBER, 2015.

PER COURT :-

1 All the applicants in the Civil Applications are the legal heirs of the deceased petitioner No.1 Somnath Namdeo Chavan, petitioner No.5 Jaywant Ananda Bramhane and petitioner No.7 Kashinath Raghunath Ahire.

2 Mr. N.L. Choudhari learned counsel appearing on behalf of the applicants submits that, Writ Petition No.3397 of 1997 was admitted by this Court by order dated 18.3.1988. Since the petition was admitted, there was a bonafide belief on the part of the petitioners that, the matter would be taken-up for final hearing in due course. Since the Writ Petition was not listed for final hearing, there was no communication between the petitioners and the learned Advocate appearing on their behalf. Only when the matter became ripe for final hearing that contact was developed with the petitioners. It was then revealed that, the petitioners Nos. 1, 5 and 7 have passed away.

3 Mr. N.L. Choudhari further submits that, no harm or prejudice will be caused to the respondents, since even if the

petition is allowed, the regularization is out of question and the legal heirs would get compensation in lieu of regularization and benefits incidental and consequent thereto. As such, the respondent would not suffer any hardship or manifest inconvenience.

4 Shri Parag Barde, learned counsel appearing on behalf of respondent Dhule Municipal Council, which is presently Dhule Municipal Corporation, vehemently opposes the applications. He submits that, in the first application, there is delay of about five years (1793 days), delay of about 18 months (509 days) in the second application and delay of 12 years and two months in the third application.

5 He further submits that, even a cursory glance to the contents of the applications and the averments set-out therein would indicate that, the applicants have not put-forth any reason and as such these applications deserve to be dismissed. He has laid heavy stress on the aspect of there being no ground set out in the applications, which would justify the delay, caused in filing those civil applications. He further submits that, the delay should not be condoned merely on the basis of sympathy. He prays for rejection of the applications.

6 I have considered the submissions of the learned Advocates. It does appear from the Civil applications that, specific reasons for the delay have not been set-out. Nevertheless, it is the contention of Mr. Choudhari that, it is a common feature that, when the petition is admitted, and is not on board for final hearing, the litigating sides lose sight of the matter. Once it comes on the final hearing board, the parties keep a track of the matter. It was in these circumstances that, the death of the petitioners Nos.1, 5 and 7 was communicated belatedly.

7 It is also submitted that rejection of these civil applications would extinguish the claim of these three petitioners, who had succeeded before the Labour Court and suffered the impugned Judgment of the Industrial Court in the revision proceeding, despite the fact the Chief Officer of the respondent Municipal Council had filed a purshis, before the Industrial Court that, the revision petition be disposed of as the council does not desire to pursue the same.

8 Considering the peculiar facts of this case, as have been stated above, I am of the view that, the legal heirs of the deceased petitioners would lose the opportunity of prosecuting this petition and gain nothing if these applications are rejected. Only from this point of view, these three applications are allowed

with costs of Rs.5,000 in the first application, Rs.1,000 in the second application and Rs.10,000 in the third application.

9 Shri Barde makes a gracious statement that, these costs be donated to the Chairman, Library Committee, Advocates Association of Bombay High Court at Aurangabad. As such, the applicants shall deposit the respective costs with the Chairman, Library Committee, Advocates Association of Bombay High Court at Aurangabad, within a period of six weeks from today, failing which this order shall stand recalled and all the Civil Applications shall stand rejected.

10 After the costs are deposited, the order of abatement shall stand set-aside and the applicants shall be brought on record in the writ petition within a period of four weeks thereafter.

11 In the event costs are deposited with promptitude on or before 26.10.2015 as suggested by the learned Advocate for the applicants, the writ petition, which is part heard, shall be listed for final hearing on 27.10.2015.

(RAVINDRA V. GHUGE, J.)