

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3370 OF 1995

Solapur Municipal Corporation
Indra Bhuwan, Railway Lines,
Solapur.

.... Petitioner
(Ori. Defendant
No. 5)

Vs.

1 Vitthal Hanmantsa Gangaji
since deceased in the course of the
suit represented by the LR.

1A Shri. Dattatray Vitthal Gangji
since deceased, thru' Legal Heirs

1A-1 Smt. Sindhubai Dattatray Gangji
Age : 45 years, Occ.: Household

1A-2 Mr. Shrinivas Dattatray Gangji
Age : 38 years, Occ. : Business

1A-3 Mr. Shrinivas Dattatray Gangji
Age : 36 years, Occ. : Business

1A-4 Smt. Suvarna Anand Bhumkar
Age : Adult, Occ.: Household

All resident of House No. 589
East Mangalwar Peth, Solapur.

- 1B Shri. Chandrakant Vithal Gangji
Age : 46 years
- 1C Shri. Vijay Vithal Gangji
Age : 42 years
- 1D Shri. Arun Vithal Gangji
since deceased thru' his Legal Heirs
- 1D-1 Smt. Shanta Arun Gangji
Age : 52 years, Occ.: Household
- 1D-2 Mr. Anand Arun Gangji
Age : 25 years, Occ. : Service
- 1D-3 Mr. Abhijit Arun Gangji
Age : Adult, Occ. : Service

All resident of Abhiman Nagar,
2nd Phase 20, Murarji Peth, Solapur

Amendment carried out as per Court
order dated 18/7/2011 passed in
C.A. No. 405 of 2011

- 1E Shri. Sudarshan Vithal Gangji
Age : 38 years, Occ.: Business,
Resident of 589, East Mangalwar Peth,
Solapur
- 2 The District Collector, Solapur
(State of Maharashtra)

3 The Assistant Director of Town
Planning, Solapur

4 The Special Land Acquisition Officer,
Solapur City, Solapur.

5 The Commissioner,
Municipal Corporation, Solapur

.... Respondents
(No. 1 Original
Plaintiff. Nos. 2 to 5
Original Defts. 1 to 4)

Mr. R.S. Alange for the Petitioner.

Mr. Pankaj Das for Respondent No. 1A-1 to A-4, 1-B, 1-C, 1D-1 to D-3 and 1-E.

Mr. A.B. Vagyani, Government Pleader a/w Mr. C.P. Yadav, Assistant Government Pleader for Respondent Nos. 2 to 4.

Coram : N.M. Jamdar, J.

Date : 8 May 2017

ORAL JUDGMENT :

The Writ petition is placed before the Special Vacation Court to take up the final hearing of the pending old matters.

2 By this petition, the Petitioner-Municipal Corporation has challenged the order passed by the learned District Judge, Solapur

dated 28 October 1993 disposing of Appeal No. 405 of 1991 filed by the Petitioner-Corporation as abated.

3 The Respondent No.1 filed a Regular Civil Suit No. 101 of 1978 seeking a declaration that the proceedings taken in respect of acquisition of the suit property are null and void. The suit property is a House No. 589, City Survey No. 360, situated at Solapur. In the suit, the Petitioner-Corporation and the State Government filed their Written Statement and suit was contested. The learned Civil Judge held that the Civil Court had jurisdiction to entertain the suit and held that the land acquisition proceedings in respect of the suit property were bad in law and null and void in view of provisions of Maharashtra Regional Town Planing Act, 1966. Accordingly, the learned Civil Judge, by judgment and decree dated 5 October 1991.

4 Appeal No. 405 of 1991 was filed by the Petitioner-Corporation on 20th December 1991. Notices were issued to the Respondent on that date. After notices were returned with Bailiff's report that the Respondent no.1 has expired, the Petitioner-Corporation moved an application below Exhibit 14 on 17 June 1992, which has been rejected by the learned District Judge by the impugned order dated 20 October 1993, consequently dismissing the Appeal.

5 I have heard Mr. R.S. Alange, the learned counsel for the Petitioner, Mr. Pankaj Das, the learned counsel for Respondent no.1 and Mr. A.B. Vagyani, the learned Government Pleader for Respondent no.2, State.

6 Mr. Alange, the learned counsel for the Petitioner submitted that the impugned order is perverse and the learned District Judge has not exercised the jurisdiction and discretion properly. Mr. Das, the learned counsel for Respondent no.1 supported the impugned order stating that there is no reason given for delay nor there is any specific prayer.

7 The suit filed by Respondent no.1 was decreed and acquisition proceedings initiated for the purpose of road widening, were set aside. Pursuant to this public interest that the Petitioner-Corporation filed a First Appeal. After the notice issued in the appeal, was returned with Bailiff report and thereafter when enquiries were made, the Petitioner-Corporation came to know about the details of heirs of Respondent no.1. The learned District Judge, by a cryptic order did not allow the Petitioner to bring the heirs of Respondent no.1 on record and refused to condone the delay, thereby dismissing the appeal in its entirety. Code of Civil Procedure places an obligation on the Pleader to inform the death of a party to the other side. As it

discernible from the impugned order, there is no such communication by Respondent no.1. This reason has been stated in the application, which ought to have been sufficient by the learned District Judge as stated earlier. The learned Judge also did not explore the option of imposition of costs. The approach taken is perverse.

8 In these circumstances, the petition deserved to be allowed and the Appeal filed by the Petitioner is required to be restored. Accordingly, rule is made absolute in terms of prayer clause (b). Appeal No. 405 of 1991 stands restored to file to the District Judge, Solapur. The learned District Judge will make an endeavour to dispose of the Appeal within a period of one year from the date writ of this order reaches. All contentions on merits of the parties are kept open. Parties to appear before the learned District Judge on 15 June 2017. No order as to costs.

(N.M. Jamdar, J.)