

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10117 OF 2015

Bharati Nagin Solanki ... Petitioner

Vs.

The Bombay Municipal Corporation & Ors. ... Respondents

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Mr. Mahendra Shingade for the Petitioner.

Mr. Vinod Mahadik a/w Mr. Pradeep M. Patil i/b. Ms. Sangeeta Kulkarni, AGP for Respondent-BMC

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**CORAM : S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE : OCTOBER 10, 2017.

P.C. :

1. The petitioner has filed this Petition in this Court seeking a direction to the respondent Brihanmumbai Mahanagar Palika and its Administrative Officer to release the terminal benefits of deceased Nagin Chatur Solanki.

2. The petitioner states that the deceased was working as Safai Karmachari with the respondents since 13th December, 1993. The petitioner before us is known, styles and names herself as Bharati Nagin Solanki. The petitioner stated that before the marriage, the deceased was calling her by the name "Rekha", however, on account of their relations, they later on got married. From that wedlock, there are children namely, one son Pritam, aged 18 years at the time of filing of the Petition and another son Pravin, aged 16 years.

3. On 10th October, 2009, the deceased expired and that is evidenced by a copy of the death certificate marked as annexure "B".

4. Mumbai Municipal Corporation and the authorities in-charge of releasing the terminal benefits, firstly, were considering the request of the petitioner to appoint her on compassionate ground and later, to pay her all the terminal benefits. However, the petitioner was informed on 24th August, 2011 that the deceased nominated one Smt. Rekha as his wife and that nomination is in writing bearing a date i.e. 30th January, 1996. The petitioner relies on the marriage certificate and the marriage was solemnized on 19th November, 1996. The respondents, relying on the entry therein, would submit that the deceased had married Smt. Rekha and she appears to be his first wife. Therefore, the petitioner was called upon to produce or submit a succession certificate.

5. The petitioner made an application. The petitioner, in the application for issuance of such certificate, stated that the deceased had nominated the petitioner in the service record and she is the same lady. In other words, there is no lady by the name Rekha and allegedly the first wife of the deceased. The said Rekha and the petitioner are one and the same. The petitioner states in this Petition that inadvertently in the cause title of the Miscellaneous Application No. 1025 of 2011 for issuance of

succession certificate, the petitioner did not mention her name as Bharati alias Rekha Nagin Solanki. Therefore, this error continues even in her succession certificate.

6. An application was made to correct it but that application was rejected.

7. The petitioner has pointed out that she is ready and willing to give the necessary undertaking, execute the indemnity bond indemnifying the respondents against any claim which may be by any person claiming to be the heir or legal representative of the deceased.

8. The petitioner has relied upon the No Objection Certificate issued by the brothers of the deceased as also the sister.

9. This, according to her, would denote that she was indeed the legally wedded wife of the deceased and none other can claim the benefit.

10. The petitioner therefore made a request to accept the indemnity bond and release the amount as also appoint her on compassionate basis.

11. The petitioner was informed by the Municipal Corporation that when she has not been able to produce absolute proof and of the nature demanded by the Municipal Corporation, it will not be possible to consider her request.

12. Eventually, this Petition questions the stand of the respondents and all the more, when the petitioner has all the relevant documents in her possession concerning the deceased and she resided with him as his wife, gave birth to children from the said wedlock that the counsel appearing for the petitioner would submit that the annexures to this Petition be accepted as her undertakings, including the statements in the memo of the Petition and further, she would execute an indemnity in the format prescribed or insisted by the Municipal Corporation but she must be provided this relief for she is the widow of a Safai Karmachari.

13. Having heard both sides, and perusing the Writ Petition and the annexures thereto, what we have noted is that the Municipal Corporation has been corresponding with the petitioner. The petitioner is being informed throughout by the respondents that it will not be possible to entertain and accept her claim. While communicating with her and in writing, the Municipal Corporation only insists that the petitioner must produce absolute proof including an order from the competent court that Bharati Nagin Solanki and Smt. Rekha Nagin Solanki are one and the same and there is no other wife of the deceased.

14. The essential averments in the Writ Petition, about the marriage and the birth of children and the deceased and the petitioner having resided together, are not disputed. The petitioner has also on 18th December, 2014, informed in writing

to the Municipal Corporation that she and the deceased were knowing each other prior to one and half years of their marriage. The deceased, out of love and affection, was calling her as Rekha, however, when they decided to get married, the deceased made an entry in the service book on 14th November, 1995 and against the entry/column “wife”, he wrote the name “Rekha”. However, later on, they got married on 19th November, 1996. The petitioner states that she was also known as Rekha and the deceased would always call her by that name. We do not find any denial of this fact by the respondents. Further contents of this letter would reveal that on 18th December, 2011, the petitioner issued a public advertisement/notice and invited objections from all concerned and particularly whether she can use the name Rekha w/o Nagin Solanki. She has not received any response to this public notice. The petitioner has also set out the details of the two sons. She has been doing all this for a paltry sum of Rs.62,000/- lying to the credit of the deceased with the Municipal Corporation. The letter which we have referred to, copy of which is at pages 35 to 37 of the paper book, has also been signed by her as Rekha alias Bharati Nagin Solanki.

15. In our view, the above would suffice, and in the facts peculiar to this case, without our order being treated as a precedent for similar cases, the interest of justice would be served if we direct the Municipal Corporation to release the amount as crystallized above and with any accrued interest in favour of the petitioner as expeditiously as possible and within a period of four

weeks from the date of her execution of the requisite indemnity bond. The indemnity bond should indemnify the respondents, its officers, servants and agents against all claims which may be made towards the terminal benefits of the deceased. We order accordingly.

16. On the execution of the indemnity bond, the amount should be credited to the bank account of the petitioner. The petitioner's Advocate shall forward all the details of the petitioner's bank account. In the event there is any policy of compassionate employment/appointment, then, the Municipal Corporation shall sympathetically consider the request of the petitioner to employ the elder son Pritam in place of the deceased so that the petitioner has a financial support for herself and the other son. She can then fulfill all the obligations and duties as mother of the children of the deceased. If any request is made for compassionate appointment in writing by the petitioner and the said Pritam, the said request shall be considered as expeditiously as possible and within a period of two weeks from the date of its receipt.

17. The Writ Petition is allowed in the above terms with no order as to costs. .

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)