

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

63 CIVIL APPLICATION NO. 15209 OF 2016
IN FAST/17784/2016

ATUL ARUN MAHAJAN AND ANR
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Advocate for Applicants : Mr. S.S. Choudhary
AGP for Respondents No. 1 and 2 : Mr. R.B. Bagul
...

CORAM : K.K. SONAWANE, J.

DATED : 16th JANUARY, 2018.

Order :-

1. Heard learned counsel for the applicants and learned AGP for respondent-State.

2. Present application is filed with following relief:-

"B. The delay of about 1260 caused in filing the Civil Application for setting aside the abatement order and for bringing the legal heirs of the deceased Ramesh s/o Madhukarrao Kotkunde on record may please be condoned and the legal heirs of the deceased Ramesh s/o Madhukarrao Kotkunde may please be brought on record and they may please be allowed to prosecute the First appeal by adding them as appellants."

3. Learned counsel for applicants submits that Ramesh Madhukarrao Kotkunde is one of the claimants in the proceeding in Land Acquisition Reference No. 364 of 2004 filed before learned Civil Judge, Senior Division, Osmanabad under section 18 of the Land Acquisition Act, 1894. Legal representatives of deceased Ramesh Madhukarrao Kotkunde are intending to join proceedings of first appeal filed on behalf of other claimants, namely, Atul Arun Mahajan and Vikram Khanderao Chede. Therefore, the applicants preferred present application to bring them on record as L.Rs. Of deceased Ramesh

Madhukarrao Kotkunde to prosecute first appeal by adding them as appellants.

4. After perusal of present application as well as other relevant documents on record, it appears that deceased Ramesh Madhukarrao Kotkunde was claimant No. 2 in the proceedings filed under section 18 of the Land Acquisition Act before Civil Judge, Senior Division, Osmanabad. Pending LAR proceedings before Reference Court, Ramesh Madhukarrao Kotkunde passed away in the month of January, 2013. But L.Rs of deceased Ramesh Madhukarrao Kotkunde did not take care to appear in the original proceedings as claimants. Learned Reference Court proceeded to pass impugned judgment and award which is subject matter of the appeal in this court.

5. Admittedly, deceased Ramesh Madhukarrao Kotkunde is neither added as co-appellant in the present proceedings nor he has been impleaded as party respondent. He was not shown as co-appellant in the application for condonation of delay to present the appeal. When there is no proceedings pending in the court of law, no question arises for abatement of same following death of claimant Ramesh Madhukarrao Kotkunde. Therefore, prayer for setting aside abatement order cannot be entertained at all. Moreover, deceased Ramesh Madhukarrao Kotkunde was not party applicant or appellant in the proposed appeal nor party respondent. Therefore, no question arises for bringing his L.Rs. on record. In such circumstances, relief prayed on behalf of appellants appears to be not amenable within the ambit of law. Therefore, the application being inept deserves to be rejected.

6. Accordingly, application stands dismissed no order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.