

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

**909 CIVIL APPLICATION NO.3140 OF 2020
IN
FA/2575/2019**

**KASHINATH RAGHUNATH NEWALE THR POWER OF
ATTORNEY PRALHAD (DIED) THR LRS BHARATBAI
AND ORS**

**VERSUS
THE STATE OF MAHARASHTRA AND ORS**

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Mr. G.K.Sontakke, Advocate for Applicants.

Mr. P.M.Kulkarni, A.G.P. for R – 1.

Mr. S.G.Sangle, Advocate for R – 2.

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CORAM : V.L.ACHLIYA, J.

DATE : 16/12/2020

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ORAL ORDER :

1. The application is taken out by applicants to substitute their names as legal heirs of deceased Pralhad s/o Nivruti Hemnar, the power of attorney holder of Kashinath s/o Raghunath Newale, the respondent No. 1, who is alive.

2. Heard learned counsel for applicants and the counsel representing the appellant/acquiring body.

3. In brief, it is the contention of learned counsel for applicants that applicant No. 1 Kashinath s/o Raghunath Newale has given general power of attorney to Pralhad s/o Nivruti Hemnar to appear and to defend the Appeal. The said power of attorney

holder of respondent No. 1 died on 15/10/2017 leaving behind applicant Nos. 2/1 to 2/4 as his legal representatives. The respondent No. 1 who has given power of attorney to Pralhad s/o Nivruti Hemnar is reported to be alive.

4. Learned counsel for applicants submits that the present application is filed by applicants to bring them on record as legal representatives of deceased Pralhad s/o Nivruti Hemnar as the respondent No. 1 Kashinath Raghunath Newale had executed receipt acknowledging the receipt of Rs. 1,25,000/- from deceased Pralhad s/o Nivruti Hemnar. In lieu of said amount the respondent No. 1 has allowed Pralhad s/o Nivruti Hemnar to receive the amount of compensation of land acquired which is subject matter of Appeal before this Court. It is submitted that on the strength of said receipt executed by respondent No. 1 in favour of father of applicants, the legal representatives of deceased Pralhad s/o Nivruti Hemnar are entitled to prosecute the Appeal by substituting their names as legal representatives of constituted attorney of respondent No. 1.

5. On the other hand, learned counsel for appellant/acquiring body opposed the application and submits that the application is not maintainable in law. It is pointed out that even the power of attorney given by respondent No. 1 Kashinath Raghunath

Newale in favour of Pralhad s/o Nivruti Hemnar not produced on record. More over, respondent No. 1 is alive. In that view the legal representatives of power of attorney holder of respondent No. 1 can not step into shoes of deceased power of attorney holder. It is submitted that the application is misconceived and not maintainable in law.

6. It is quite shocking to see that the application has been presented by legal representatives of power of attorney holder, when the person, who has given power of attorney is alive. The purpose of giving the power of attorney is to entrust a person the authority to perform certain acts on behalf of such person. Upon the death of power attorney holder, the authority given to such person automatically ceases to operative. It gives no right to inherit the right given to such power of attorney holder. The legal representatives of such power of attorney holder can not step in shoes of such person. So also there is no document as such in the nature of power of attorney produced on record to support the case of applicant that respondent No. 1 has appointed deceased Pralhad s/o Nivruti Hemnar as his constituted attorney. The photo copy of receipt produced on record at the most spell out that some money transaction has taken place between respondent No. 1 and deceased Pralhad s/o Nivruti Hemnar. By virtue of receipt executed, no authority vested in

favour of deceased Pralhad s/o Nivruti Hemnar to act and appear in the case as power of attorney holder of respondent No. 1. In that view, the application filed is misconceived and not maintainable in law. Hence, the application is rejected.

7. Since respondent No. 1 is alive, the Appeals can continue to be prosecuted by respondent No. 1. Notice of Appeal be issued to respondent No. 1.

8. S.O. 07/01/2021.

[V.L.ACHLIYA]
JUDGE

KNP