

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

914 CIVIL APPLICATION NO.2940 OF 2020
IN FIRST APPEAL NO.1365 OF 2018

GOVARDHAN RAMA SURVASE
DIED THROUGH L.Rs.
INDRAYANI GOVARDHAN SURVASE & OTHERS
VERSUS
THE EXECUTIVE ENGINEER, OSMANABAD MEDIUM
PROJECT, OSMANABAD & OTHERS

...

WITH

915 CIVIL APPLICATION NO.2991 OF 2020
IN FIRST APPEAL NO.1361 OF 2018

SAHEBRAO BHANUDAS SAMUDRE
(DIED) THROUGH L.Rs.
VATSALABAI SAHEBRAO SAMUDRE
VERSUS
THE EXECUTIVE ENGINEER, OSMANABAD MEDIUM
PROJECT, OSMANABAD NOW K.M.C.D.
NO.1, OSMANABAD UNDER GMIDC AND OTHERS

...

WITH

916 CIVIL APPLICATION NO.3037 OF 2020
IN FIRST APPEAL NO.1446 OF 2018

ARVIND GOROBA KATE & OTHERS
VERSUS
THE EXECUTIVE ENGINEER, OSMANABAD MEDIUM
PROJECT, OSMANABAD NOW K.M.C.D.
NO.1, OSMANABAD UNDER GMIDC & OTHERS

...

WITH

917 CIVIL APPLICATION NO.3038 OF 2020
IN FIRST APPEAL NO.1440 OF 2018
NARAYAN IRAPPA SHETE
DIED THROUGH L.Rs.MANKABAI SHETE
DIED THROUGH L.Rs.PUTLABAI NARAYAN SHETE
& OTHERS
VERSUS

THE EXECUTIVE ENGINEER, OSMANABAD MEDIUM
PROJECT, OSMANABAD NOW K.M.C.D.
NO.1, OSMANABAD UNDER GMIDC & OTHERS
...

WITH

918 CIVIL APPLICATION NO.3039 OF 2020
IN FIRST APPEAL NO.1439 OF 2018

ACHYUT NAMDEO SHITOLE
DIED THROUGH L.Rs.SARASWATI ACHYUTRAO SHITOLE
VERSUS

THE EXECUTIVE ENGINEER, OSMANABAD MEDIUM
PROJECT, OSMANABAD NOW K.M.C.D.
NO.1, OSMANABAD UNDER GMIDC & OTHERS

WITH

919 CIVIL APPLICATION NO.3128 OF 2020
IN FIRST APPEAL NO.1366 OF 2018

BHIMRAO TUKARAM KORE
DIED THROUGH L.Rs. SAVITRABAI BHIMRAO KORE &
OTHERS
VERSUS

THE EXECUTIVE ENGINEER, OSMANABAD MEDIUM
PROJECT, OSMANABAD NOW K.M.C.D.
NO.1, OSMANABAD UNDER GMIDC & OTHERS

...
Mr.Sanjay A.Wakure, Advocate for the
applicants
Mr.B.R.Surwase, Advocate for the appellant –
acquiring body.
Mr.P.M.Kulkarni, AGP for the respondent-
State.

...
CORAM : V.L.ACHLIYA,J.
DATE : 18.12.2020

P.C.

1] In disposed of Appeals the applicants have preferred these applications seeking relief to allow them to substitute their names as legal heirs of deceased respondents in respective appeals by condoning the delay.

2] Heard learned counsel for the applicants and learned counsel for the appellant-acquiring body.

3] In brief, it is the contention of the learned counsel for the applicants that the appellants have preferred appeals challenging the award passed by the Reference Court. Appeals were filed in the year 2016 challenging the reference decided on 21.08.2013. Some of the respondents have died

even prior to the decision by the Reference Court. Subsequent to the decision in appeals some of the respondents died. Without bringing the legal heirs of the deceased respondents the appeals were preferred. The appeals were placed before the Lok Adalat held on 22.04.2018. The following order has been passed :

ORDER

1) The awards impugned in the present appeals stand confirmed.

2) From the deposited amount, an amount of interest for the period of six months, be refunded to the acquiring body and the balance amount be paid to the claimants.

3) Acquiring Body is entitled for refund of the Court fee in accordance with the law.

4) Civil Applications, if any, stand disposed of.

4] It is submitted that though the respondents were dead and legal heirs were not brought on record, the appeals have been decided before the Lok Adalat. The amount in terms of reference has been deposited during

pendency of the appeals. Since the appeals were decided before the Lok Adalat without notice to legal representatives of the deceased and their names are brought on record in appeals, the applicants - claimants are facing difficulty to withdraw the amount. In order to facilitate them to withdraw the amount deposited by the appellant - acquiring body, allow the applicants - claimants to bring their names on record as legal representatives of deceased respondents by condoning delay and setting aside the order of abatement.

5] Heard learned counsel for the applicants - claimants and learned counsel for the appellants - acquiring body.

6] In my view, the applications filed by the applicants-claimants cannot be entertained in the light of enabling provision contained in Code of Civil Procedure. There is no enabling provision to entertain such applications to allow the parties to bring legal representatives of deceased appellant or respondent after decision in suit or appeal. Only enabling provisions contained under Civil Procedure

Code providing to bring legal representatives of deceased defendant/respondent is provided under Order XXII Rule 4 of the CPC which enables the appellants to bring legal representatives of deceased respondent/s on record for the purpose to prosecute the suit or appeals as the case may be. Such powers conferred under Order XXII Rule 4 of CPC can be exercised during the pendency of the proceedings. No such application can be entertained after disposal of appeal.

7] In the instant case, some of the respondents had died much prior to the award passed by the Reference Court. Their names were even not brought on record during pendency of the references. The appeals were preferred against dead persons. In some of the appeals although the respondents were not alive, still the appeals have been decided in absence of their legal representative brought on record. In such state of affairs, it is not possible for this Court to entertain these applications. In that view, the applications filed by the applicants – claimants to allow them to substitute their names as the legal representatives of deceased respondent/s on record deserves no

consideration. Accordingly, the applications are rejected.

8] Learned counsel for the appellant – acquiring body submits that the amount has been deposited with this Court in terms of the award passed pursuant to the conditional order granting stay passed by this Court. In view of disposal of the appeals the amount deposited in terms of award may be transferred to the Reference Court to be treated as deposit made in respective references under challenge so as to enable the Reference Court to disburse the amount.

9] The registry is directed to transfer the amount deposited by the appellants – acquiring body to the Reference Court to be treated as deposit made towards satisfaction of the award passed in respective references. On transfer of the amount, the Reference Court may proceed to decide entitlement of the persons to receive the compensation as legal representative of the deceased respondents – claimants in respective references.

10] The applications are disposed of in
above terms.

[V.L.ACHLIYA]
JUDGE

DDC