

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6997 OF 2023

Shivnath s/o Hanumant Kandi ... **Petitioner**
Age 55 years, Occu: Business,
R/o Block No.1/C, Kandi Niwas,
Rokadiya Hanuman Colony,
Aurangabad

VERSUS

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| 1. | The State of Maharashtra,
Industrial Development Department,
Mantralaya, Mumbai 32. | |
| 2. | Maharashtra Industrial Development
Corporation,
Through the Executive Engineer
Regional Office, Aurangabad Industrial
Area, Udyog Vardhini, Railway Station
Road, Aurangabad | ... Respondents |

Mr. Punit S. Mehta, Advocate for the petitioner
Mr. S. W. Munde, AGP for Respondent-State
Mr. S.S. Dande, Advocate for Respondent No.2.

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.

DATE : 10th July, 2023

ORDER (Per Y. G. Khobragade, J.)

1. The Petitioner has put forth prayer clause (B) as under:

(B) By issuing appropriate writ/direction/order, the respondent No.2 may be directed to amend/correct the record of partnership firm M/s Deogiri Cement Pipe over

the record of Maharashtra Industrial Development Corporation by deleting the name of deceased partner Hanumant Sitaram Kandi and recording the name of petitioner as his brother and sister in his place on the basis of the registered Will Deed No. 1851/2013 dated 2/04/2013 within a period of weeks."

2. On the face of the record, it appears that Shri Hanumant Sitaram Kandi, with his brothers, initially started running a partnership firm namely M/s Deogiri Cement Pipe at Plot Nos. A-20, A-21 & A-22, Chikalthana Industrial Area. The Constitution of the firm was changed on 23.02.2012 as below:

- (A)
- 1) Sow. Vijaya Kishan Chikyal
 - 2) Shri Amarnath Hanumant Kandi
 - 3) Sow. Sujata Subhash Peddarpethkar
 - 4) Miss Sunanda Hanumant Kandi
 - 5) Shri Shivrath Hanumant Kandi
 - 6) Sow. Surekha Rajkumar Shrivastav

All R/o Plot No.1, Rokadiya Hanuman Colony, Jalna Road, Aurangabad have joined the firm as new partners on 31-03-2001

- (B) Partners

- 1) Shri Durgadas Sitaram Kandi
 - 2) Shri Jagdish Sitaram Kandi
 - 3) Shri Rajaram Chuniji Sadgure
- have retired W.E.F. 01-04-2001

Notice in Form "E" Dated 12-01-2012

Notary: Vinod Bagadiya Regd.No.5642,
Aurangabad

3. The partner Shri Hanumant Sitaram Kandi, the father of present petitioner died on 26.12.2015. However, during his life time, he executed a Will Deed and bequeathed landed properties described in the Will Deed including his 30% share in the partnership firm- M/s Deogiri Cement Pipe, in favor of the petitioner Shri Shivnath s/o Hanumant Kandi. Thereafter, the petitioner submitted an application dated 10.02.2022 with Respondent No.2-MIDC for mutation of his name being partner in place of his father to the partnership firm. Accordingly, Respondent No.2 issued a communication dated 17th March, 2023 and directed the petitioner to furnish following documents:

- (a) Succession certificate in respect of deceased partner Shri Hanumant Kandi from the competent court.
- (b) No objection certificate from the District Industries Center for the said change.
- (c) Indemnity bond on stamp paper of Rs.100/- .
- (d) Declaration on stamp paper of Rs.100-.

4. The learned counsel for the petitioner urged that, since the petitioner's father executed a Registered Will dated 02.04.2013 and bequeathed his 30% share in the partnership firm in favour of the petitioner, Respondent no. 2 ought to have mutated the petitioner's name in it's record in respect of the partnership firm, instead of calling

for succession certificate. Therefore, the impugned communication is illegal, bad in law and deserves to be quashed and set aside.

5. Mr. Dande, the learned Advocate appearing for Respondent No.2 submitted that since the petitioner prays for correction/mutation of his name in record of the Respondent No. 2 on the basis of a Will Deed executed by the deceased partner of the Industrial Firm and as the deceased partner is having other legal heirs, the petitioner is directed to furnish above documents, which is justifiable to avoid future complication. Hence, he prays for dismissal of the petition.

6. It is a matter of record that, on 23.02.2012, change in M/s Deogiri Cement partnership was effected. As per the said entry Shri Hanumant Sitaram Kandi, the father of the present petitioner and others are partners of M/s Deogiri Cement Pipe, situated at Plot Nos. A-20, A-21 & A-22, Chikalthana Industrial Area. On 02.04.2013, Shri Hanumant Sitaram Kandi, the Petitioner's father executed Registered Will and bequeathed various landed properties described in the Will Deed including 30% share in the partnership. On 26.12.2015, Shri Hanumant Sitaram Kandi, the partner of firm died leaving behind legal heirs. The petitioner produced a copy of the registered Will Deed executed by Shri Hanumant Sitaram Kandi. As per contents of the Will,

Dr. Anjai Ware and Dr. Sunil Ware are appointed as Administrators. Dr. Anjali Sunil Ware is custodian of the Original Will. The petitioner is seeking mutation of his name in record of the Respondent No. 2 in respect of the industrial plot Nos. A-20, A-21 and A-22. It is trite law that, merely because the Will is registered, it does not ipso-facto create a right in favour of the beneficiaries, without it being tested before the competent Civil Court. Therefore, in order to ascertain the right of the petitioner and other legal heirs of the deceased in the partnership firm, Respondent No.2 called upon the petitioner to produce a Succession Certificate, No Objection Certificate from DIC, Indemnity Bonds and declaration, which certainly appears justifiable. Therefore, as per the provisions of Hindu Succession Act, the petitioner can obtain the succession certificate on the basis of the Will Deed from the Court having jurisdiction and can comply with the impugned communication dated 17th March, 2023. Hence, we are not inclined to grant the prayer of the petitioner. However, the petitioner is granted leave to file appropriate succession proceedings before the competent court within 15 days from today. After the institution of such proceeding for succession certificate, the competent court shall decide the same preferably within a period of six months.

7. It is needless to state that, upon compliance of the required documents, Respondent No.2 Authority shall mutate the name as prayed for.

8. This Petition is disposed off in terms of the above directions.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan