

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

**CIVIL APPLICATION NO. 576 OF 2023 IN
CIVIL APPLICATION NO. 10166 OF 2016 IN
FIRST APPEAL NO. 3064 OF 2015**

Anita Harish Tapase & others

Applicants

Versus

Executive Engineer,
Irrigation Project Strengthening ‘
Division, Omerga & others

Respondents

**WITH
CIVIL APPLICATION NO. 577 OF 2023 IN
CIVIL APPLICATION NO. 10165 OF 2016 IN
FIRST APPEAL NO. 3064 OF 2015**

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Executive Engineer,
Irrigation Project Strengthening ‘
Division, Omerga & others

Respondents

Mr. P. S. Chavan, advocate for the Applicants.

Mr. R. A. Tambe, advocate for Respondent No.1.

Mr. S. P. Tiwari, AGP for Respondents No.2 & 3.

Mr. V. D. Hon, Senior Counsel i/by Mr. Nikhil S. Jaju,
advocate for Respondents No.5 and 7.

Mr. R. V. Gore, advocate for Respondent No.6.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 19th July, 2023.

PC :

1 Heard rival submissions.

2 The applicants are seeking permission to bring the legal representatives of applicant no.5 – Asha Sambhaji Chaugule on record, who admittedly died on 19.04.2021, by condoning delay of 108 days.

3 The learned Counsel for the appellant-acquiring body, which is Respondent No.1 herein, is not having any objection for grant of such prayer. However, the learned Senior Counsel for Respondents No.5 and 7 has strongly opposed the applications on the ground that these applicants had already tried to implead themselves in the original Land Acquisition Reference filed by Respondents No.4 to 7, but the learned Reference Court rejected their application on the ground that they were having remedy of filing civil suit to claim their rights.

4 The learned Senior Counsel Mr. Hon also pointed

out that this Court had already fixed the Civil Applications No.10165 of 2016 and 10166 of 2016 for final hearing along with the main appeal. As such, there cannot be any addition in those applications contrary to the earlier order of this Court.

5 It is significant to note that the present applicants have filed Civil Application No.10165 of 2016 for adding them as party to the main appeal, whereas, they have filed Civil Application No.10166 of 2016 for modification of earlier order dated 03.05.2016 and directing the respondents no. 5 to 7 to deposit the amount of compensation to certain extent. It appears that since beginning, there is dispute between applicants and respondents no.4 to 7 as regards their share in the joint family property as well as in the compensation awarded in this matter. Further, it is important to note here that the applicants have already filed Civil Suit for securing their rights in the joint family property and the same is pending. The rights of the applicants will be decided in the pending civil suit.

6 The learned Counsel for the applicants submits that respondents no.5 to 7, after death of respondent no.4-Subhadrabai played fraud upon this Court and contended that only they are the legal heirs of Subhadrabai. However, that part will be considered later on and it is important to note that the rights acquired by the applicants as well as respondents no.5 to 7 will be determined in the civil suit. It is further significant to note that in the aforesaid civil suit, the present applicants have not claimed any prayer for getting share in the compensation in respect of G. No. 871. This is only an appeal filed by the acquiring body to challenge the impugned judgment whereby enhanced compensation is awarded. It is significant to note that during pendency of this appeal, Subhadrabai had died and when it is not disputed that the applicants are her legal representatives along with respondents no.5 to 7, they are required to be brought on record for contesting the aforesaid Civil Applications filed by them.

7 As such, both these Civil Applications are allowed in terms of prayer clauses {B} and {C}. The applicants are directed to carry out the amendment in their applications viz. Civil Applications No. 10165 of 2016 and 10166 of 2016, within the stipulated period.

Both the Civil Applications are disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

adb

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BENCH AT AURANGABAD**

FIRST APPEAL NO. 3064 OF 2015

The Executive Engineer,
Irrigation Project Strengthening
Division, Omerga & others

Appellants

Versus

Suryakant Manju Shinde & others

Respondents

Mr. R. A. Tambe, advocate for the appellants.
Respondent No.1 deleted as per Court's order dated
10.06.2016.

Mr. V. D. Hon, Senior Counsel i/by Mr. Nikhil S. Jaju,
advocate for Respondents No.2 & 4.

Mr. R. V. Gore, advocate for Respondent No.3.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 19th July, 2023.

PC :

Heard.

Interim relief, if any, to continue.

Office to accept the additional affidavits in reply in
Civil Applications No.10165/2016 and 10166/2016.

(SANDIPKUMAR C. MORE)

{7}

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JUDGE

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