

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.10126 OF 2023
IN FIRST APPEAL NO.478 OF 2023

1. Ramchandra @ Vikram s/o Lotan Patil (Died)
Through His Legal Heirs,
- 1a. Devkabai w/o Ramchandra Patil
Age: 75 years, Occu.: Agri.,
- 1b. Santosh s/o Ramchandra Patil
Age: 50 years, Occu.: Agri.,
- 1c. Champalal s/o Ramchandra Patil
Age; 48 years, Occu.: Agri.,
- 1d. Babanrao s/o Ramchandra Patil
Age: 46 years, Occu.: Agri.,
- 1e. Bharat s/o Ramchandra Patil
Age: 44 years, Occu.: Agri.,
- 1f. Ushabai d/o Ramchandra Patil
Alias Ushabai w/o Prabhakar Chaudhari
Age: 42 years, Occu.: Agri.,
- 1g. Sushilabai d/o Ramchandra Patil
Alias Sushilabai w/o Vasudev Patil
2. Sambhaji Tumdu Patil,
Age: 48 years, Occu.: Agri.,
3. Yogesh Dattatraya Desale,
Age: 40 years, Occu.: Agri.,
All R/o. Padalsare Tq. Amalner,
Dist. Jalgaon.

.. Applicants

Versus

1. The Executive Engineer,
Hatnoor Project Chopada,
Tq. Chopda, Dist. Jalgaon.
2. The State of Maharashtra
Through Collector, Jalgaon.
3. The Special Land Acquisition Officer
No.1/Assistant Collector, Upper Tapi
Project (Hatnoor), Jalgaon.
Dist. Jalgaon.

.. Respondents

...
WITH
CIVIL APPLICATION NO.8325 OF 2023 IN FA/478/2023
WITH
CIVIL APPLICATION NO.9652 OF 2023 IN FA/478/2023
WITH
CIVIL APPLICATION NO.14864 OF 2022 IN FA/478/2023

...
Mr. H. P. Kshirsagar, Advocate for applicant.
Mr. S. B. Kadu, Advocate for respondent No.1.
Mr. A. M. Phule, APP for respondent Nos.2 and 3 – State.

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 21st August, 2023

PRONOUNCED ON : 11th October, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present application has been filed for condoning the delay of 1583 days in bringing the legal representatives of applicant No.1 Ramchandra @ Vikram Lotan Patil on record of first appeal.

2. The applicants - original claimants had filed proceedings for enhancement in compensation before the Land Acquisition and Rehabilitation and Resettlement Authority, Nagpur in Matter No.2222/NSK/JLG/2018 decided on 23.11.2020. The respondent acquiring body has preferred appeal and the matter is pending for adjudication. It has been contended that due to financial crisis and medical problems, the legal heirs of Ramchandra @ Vikram was not brought on record by applicant No.2 Sambhaji Tumdu Patil. The delay is not deliberate. Sambhaji was the only person who was looking after the matter. It has been further stated that Ramchandra @ Vikram has been wrongly shown as party respondent No.1. In fact, the partition had occurred on or before 2007/2008 and 7/12 extract of Gut No.22 (Khat No.16) has been mutated showing that applicant - Sambhaji is the sole owner, however, the respondent authority has not updated the old record. Therefore, by present application the delay has been sought to be condoned.

3. Heard learned Advocate Mr. H. P. Kshirsagar for the applicant, learned Advocate Mr. S. B. Kadu for respondent No.1 and learned AGP Mr. A. M. Phule for respondent Nos.2 and 3 – State. In order to cut short it can be submitted that the learned Advocate for the applicants and the respondents in appeal has reiterated the contention as in the application.

4. Learned AGP appearing for respondent Nos.2 and 3 has raised

objection stating that as per the documents those have been produced now, said Ramchandra @ Vikram expired on 11.01.2019. If we consider the impugned judgment by the competent authority, then it appears to have been filed somewhere in 2018, but decided on 23.11.2020, that means said Ramchandra @ Vikram Lotan Patil expired when the matter was before the appropriate authority. No efforts were taken to bring his legal representatives in the said proceedings. The enhancement that could have been granted and actually granted has become a joint and several decree/award. Without the legal heirs of Ramchandra @ Vikram, the matter would not have proceeded and, therefore, by relying upon the decision in **Gurnam Singh (Died) Through Legal Representatives and others Vs. Gurbachan Kaur (Died) By Legal Representatives and others, [2017 AIR (SC) 2419]**, he submitted that the decree passed by a Court for or against a dead person is a nullity and therefore, the application cannot be allowed.

5. At the outset, we are unable to consider as to what the applicants exactly want to say. At one breath, it appears that even the legal heirs of Ramchandra @ Vikram have executed General Power of Attorney in favour of applicant No.2 Sambhaji and at another breath, it has been tried to be stated that there was partition in 2007 and 2008, but the authorities have not considered the change and respondent No.1 Ramchandra @ Vikram has been wrongly shown as party respondent No.1. If we consider the

impugned judgment passed by the competent authority, said Ramchandra @ Vikram Lotan Patil was applicant No.1. At no point of time before the competent authority, he has made averment that there was partition. Sambhaji was the applicant No.2 before the competent authority also and it appears that he had examined himself. The impugned judgment does not say that any partition document was produced or Sambhaji had prayed for deletion of name of Ramchandra @ Vikram. Further the document of General Power of Attorney now produced before this Court, which is executed on 31.05.2023, shows that the said land was the ancestral property of Chandrakant Tumdu Patil and Ramchandra @ Vikram Lotan Patil. They are sure that they are entitled to get the enhancement in compensation, but only to receive that money, it is said that they are authorizing applicant No.2 Sambhaji. That means, they are not giving up their right to receive the compensation.

6. A fact has to be brought on record that when Ramchandra @ Vikram expired, Sambhaji was aware about the proceedings which were filed before the competent authority, yet he has not made any efforts to bring the legal representatives of Ramchandra @ Vikram on record when the matter was before the competent authority. Now, when in the appeal filed by the acquiring body the amount has been deposited, the question arose for distribution of amount and notice was issued to deceased. Accordingly,

report has been received that he has expired. It appears that everybody has woke up. Therefore, certainly conduct of the applicants is required to be noted. Absolutely no documentary evidence has been produced to support the contention that applicant No.2 Sambhaji was having some medical problem from 2018 to 2022.

7. The main aspect that is required to be considered is whether non bringing of legal representatives of deceased Ramchandra @ Vikram before the competent authority had amounted to decree/award passed for or against a dead person is a nullity in view of decision in **Gurnam Singh (Supra)**. We are also guided by the decision in **Delhi Development Authority Vs. Diwan Chand Anand and others**, [2022 (10) SCC 428]. In this case, two plaintiffs claiming to be the co-owners of the suit property had filed suit before the Civil Court for declaration and permanent injunction. The suit was filed for challenging the acquisition proceedings under the Land Acquisition Act, 1984. The Trial Court had decreed the suit in spite of preliminary issue regarding the jurisdiction of the Civil Court. Acquiring body had then preferred appeal before the Hon'ble Delhi High Court. The appeal was admitted, but thereafter it was found that some of the defendants/respondents were not served as they had expired and, therefore, by order dated 09.07.2007, the Hon'ble Delhi High Court had dismissed the entire appeal as having abated on the point that the legal

representatives have not been brought on record during the pendency of the appeal. The earlier decisions were considered by the Hon'ble Supreme Court, especially on the point of joint and indivisible decree. Special reference was to the decision in **State of Punjab Vs. Nathu Ram, [AIR 1962 SC 89]**. The main question that was considered was whether the Court can proceed with the matter against the surviving respondents/defendants and in **Delhi Development Authority (Supra)**, the Hon'ble Supreme Court held that, "the question whether a Court can dealt with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the Court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the Court." Further the basic criteria that is required to be considered is whether the right to sue survives. Upon the facts of the case that is for challenge to the acquisition proceedings, it was observed that the Hon'ble High Court has failed to consider whether right to sue survives against the surviving plaintiffs or not and, therefore, set aside the order of dismissing the appeal as a whole as abated and remitted the matter for consideration to the High Court. Here, we are also required to take into consideration whether the right to sue

survives against the other claimants when one of the claimant had expired. As aforesaid, when the claimants themselves had not come with the case that their shares are different or defined and only one of them is the owner thereby indicating that the other claimant is not entitled to get compensation appears to be somewhat mistakenly taken at the Appellate stage, but what was found by respondent No.3 the land acquisition officer at the time of initial award was that even Ramchandra @ Vikram was entitled to get compensation and thereafter he had come before the competent authority for getting the said compensation enhanced. The initial award passed by respondent No.3 was in respect of the entire acquisition and, therefore, even the other claimant/sharer can, by giving consent, get the entire compensation on behalf of everybody. Under the said circumstance, when “right to get the compensation enhanced” is concerned, it can be proceeded even without adding or bringing the legal representatives of one of the claimants.

8. We would like to consider this position from another angle also. When the compensation was awarded to more than one claimants and then one of them expires, as regards the claimant who has expired, his legal representatives are still entitled to get whatever amount that has been awarded. The land acquisition enactment has been considered to be benevolent provision and, therefore, the right to receive compensation

upon the acquisition of property of a person cannot be so taken away or curtailed. Therefore, taking liberal view, the delay requires to be condoned. Application therefore deserves to be allowed. Here, in this case, the present respondent No.1 in the application is the original appellant and, therefore, directions are required to be issued to the acquiring body to bring the legal representatives of deceased Ramchandra @ Vikram Lotan Patil on record. Hence, the following order :-

ORDER

- I) Civil Application No.10126 of 2023 stands allowed and disposed of.
- II) The delay of 1583 days in bringing legal representatives on record stands condoned.
- III) The acquiring body is directed to carry out the amendment to that effect in the body of the appeal on or before 25.10.2023.
- IV) Place the other applications for further consideration on 01.11.2023.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm