

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

**CIVIL APPLICATION NO.17321 OF 2022
IN
FIRST APPEAL NO.1412 OF 2021**

- 1) Giridhar Dattatray Patil,
Age-58 years, Occu:Agriculture,
- 2) Bhaskar Dattatray Patil (died)
Through Lrs
- 2.1) Nilima Bhaskar Patil
Age-58 years, Occu:Agriculture,
- 2.2) Vivek Bhaskar Patil,
Age-38 years, Occu:Agriculture,
- 2.3) Kunal Bhaskar Patil,
Age-36 years, Occu:Agriculture,
- 3) Subhash Dattatray Patil,
Age-63 years, Occu:Agriculture,
- 4) Pratik Dattatray Patil,
Age-61 years, Occu:Agriculture,
- 5) Sunanda Prabhakar Patil,
Age-40 years, Occu:Agriculture,

All R/o-Sakegaon, Tq-Bhusawal,
Dist-Jalgaon.

...APPLICANTS

VERSUS

- 1) The Executive Engineer,
Girna Cannel Renovation Division-2,
Jalgaon,

- 2) Superintending Engineer,
Tapi Development Corporation,
Jalgaon,
- 3) The Collector, Jalgaon,
- 4) The Special Land Acquisition Officer,
Upper Tapi Project (Hatnur),
Jalgaon.

...RESPONDENTS

...
Mr.Ajeet B. Kale Advocate for Applicants.
Mr.A.D. Pawar Advocate for Respondent Nos. 1 and 2.
Mr.R.D. Sanap, A.G.P. for Respondent Nos.3 and 4.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE OF RESERVING ORDER : 3rd APRIL 2023

DATE OF PRONOUNCING ORDER : 3rd MAY 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Civil Application has been filed with following prayers:-

“ A) Allow this Civil Application,

B) To allow the applicant to amend the title clause of the First Appeal by bringing Lrs. of deceased applicant no.2 Bhaskar Dattatray Patil on record,

C) To condone the 3308 days delay if any caused for bringing the legal heirs of deceased applicant no.2 Bhaskar Dattatray Patil on record,

D) Any other suitable and equitable relief to which the applicant is found entitled be granted. "

2. The applicants contend that they are the original claimants who had filed Reference for enhancement of compensation for the land acquired. It was filed before the Presiding Officer, Land Acquisition and Rehabilitation Authority, Nagpur against the respondents in Application. The said Reference came to be partly allowed on 8th November 2019 and the acquiring body - original respondents have filed First Appeal before this Court. Original claimant / applicant No.2 - Bhaskar Dattatray Patil expired on 31st July 2013 and therefore, it is necessary to bring his legal representatives on record. It is stated that the applicants were not aware of the proceedings and the procedure for bringing legal heirs on record and therefore, if there is some delay in filing the Application, it is required to be condoned. The act of the applicants is not intentional. It has been further submitted that some time has been consumed in getting death certificate and also the legal heir certificate. If the Application is not

allowed, the applicants would suffer irreparable loss which cannot be compensated in terms of money.

3. Respondent No.1 had filed affidavit-in-reply through its Executive Engineer - Santosh Ramchandra Bhosale. It has been contended that Special Land Acquisition Officer (for short "S.L.A.O.") had passed an award on 21st February 2015 and prior to that Section 4 Notification was issued on 24th October 2011. The case for enhancement of compensation was filed by five applicants, in which name of Bhaskar Dattatray Patil was figuring as applicant No.2 and the case was filed in the year 2018. It is stated that Bhaskar Patil had filed it through his general power of attorney – Giridhar Dattatray Patil, who is applicant No.1 here. When Bhaskar had expired on 31st July 2013 i.e. even before passing of award by S.L.A.O., on 21st February 2015, wherein also no steps were taken to inform the concerned authority about the death of Bhaskar and then the Reference was filed specifically contending that deceased Bhaskar is also one of the applicants before the Reference Court. The Application is therefore, filed with *mala fide* intention and by suppression of facts and therefore, deserves to be rejected. It is also then stated that respondent No.1 in the present Application is the

original appellant. At no point of time intimation was given on behalf of the respondents in Appeal that Bhaskar has expired long back. Therefore, the original appellants have not brought legal representatives of Bhaskar on record.

4. Heard learned Advocate Mr. Kale appearing for the applicants, learned Advocate Mr. Pawar appearing for respondent Nos.1 and 2 and learned A.G.P. Mr. Sanap appearing for respondent Nos.3 and 4. In order to cut short, it is stated that both the learned Advocates have made submissions in support of their contentions.

5. Learned Advocate Mr. Kale appearing for the applicants, especially submitted that Giridhar, Bhaskar as well as their two brothers Subhash and Pratik and one Sunanda Prabhakar Patil had made the said Reference and they had given general power of attorney to Giridhar. All of them are rustic villagers and had no knowledge about bringing of legal heirs on record. Their piece of land has been acquired and thereby they have been deprived of their income, therefore, they deserved to be adequately compensated. If the legal representatives of Bhaskar are not brought on record, they would suffer.

6. At the outset, it is to be noted that there is delay of 3308 days in taking any action in respect of bringing the fact of death of Bhaskar on record. Here, the Application has been filed by the original respondents in appeal. They had not intimated death of Bhaskar at any earlier point of time before any authority. In fact it appears from the dates those have been given in the affidavit in reply and which have not been challenged, that Bhaskar expired on 31st July 2013 i.e. after issuance of Notification under Section 4 on 24th October 2011 but before passing of the award by the S.L.A.O. on 21st February 2015. Thereafter all those persons, who were the owners of the land to the extent of 00 Hectare 07 R out of 01 Hectare 29 R from Gut No.129/1 from village Sakegaon, Taluka-Bhusawal, District-Jalgaon, filed common Reference and it is stated that it was filed under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Right to Fair Compensation Act"). The S.L.A.O. appears to have granted compensation of Rs.2,96,803/- whereas by way of enhancement the applicants therein demanded amount of Rs.96,40,697/-. The said Reference was before the Presiding Officer, Land Acquisition and Rehabilitation Authority, Nagpur and

it came to be decided on 8th November 2019. Many Reference Applications were decided by the said common order and a common decree has been passed. Now it appears that the acquiring body has challenged the said decree by filing various Appeals against the respective claimants.

7. Coming to the facts of the case, it appears that Bhaskar expired even before S.L.A.O. passed the award and there was no attempt to bring the legal representatives of Bhaskar on record. Thereafter, when Reference was filed by the claimants, it was posed that Bhaskar is still alive and Giridhar Dattatray Patil was projected as general power of attorney. The concerned authority deciding the Reference appears to have not gone into the facts as to whether the claimants have produced the general power of attorney on record or not and whether the said general power of attorney bears the signature of Bhaskar or not. When it is the duty of any Court / Tribunal or the Judicial Authority deciding the rights of the parties to see that the parties are properly represented before it, it ought to have been objected and directions should have been given that in absence of the signature of Bhaskar on the general power of attorney, necessary steps should be taken. Such Reference has been

decided without taking any steps in that behalf. After the present Appeal i.e. First Appeal No.1412 of 2021 is filed, then also no such step has been taken till the present Application is filed. Rather, prior to that application was filed for allowing original claimants to withdraw the amount of compensation. This Court vide order dated 17th December 2021 together with other applications for withdrawal of compensation, allowed withdrawal of the amount which is stated to be in continuation of order passed by this Court on 18th August 2021, which was to the extent that the acquiring body was directed to deposit 25% of the decretal amount. That means, this Court had allowed the applicants to withdraw 25% of the decretal amount. Now the present Application has been filed.

8. The first and foremost fact is that the Appeal is filed by the present respondents in Application. It would be the duty of the appellants to bring the legal representatives on record if any of the respondent expires. Of course a duty is cast on the respondent and / or to the Advocate representing the respondents to intimate about death of a party. Rule 10-A of Order XXII of the Code of Civil Procedure cast such duty on pleader to communicate to the Court death of a party. Therefore,

it applies to either party, but certainly for the pleader who is representing the respondents. Rule 2 of Order XXII of the Code of Civil Procedure describes for procedure where one of several plaintiffs or defendants dies and right to sue survives. Rule 3 of Order XXII of the Code of Civil Procedure prescribes for the procedure in case of death of one of several plaintiffs or of sole plaintiff and Rule 4 of Order XXII of the Code of Civil Procedure prescribes for procedure in case of death of one of several defendants or of sole defendant.

9. Usually, the applications to bring the legal representatives on record are required to be filed by the plaintiff or appellant in any suit or appeal, as the case may be, and there is no such duty cast on defendant or respondent to file such application. The limitation has been prescribed for bringing the legal representative on record. However, that limitation would be against the person who has the duty to bring the necessary parties to the litigation on record. Under such circumstance in this case practically what was required was the intimation by the original claimants about the death of Bhaskar. When it is specifically stated on oath by Executive Engineer of original appellant No.1 that no such intimation was ever given by the

original claimants, the same will have to be considered as a true fact when the applicants are coming with the prayer to bring the legal representatives of Bhaskar on record. The point of limitation would not have then arisen if the intimation would have been given by the original claimants.

10. We would like to rely on the decision of the Constitutional Bench of the Supreme Court in ***Sardar Amarjit Sing Kalra (Dead) by LRs vs. Pramod Gupta (Smt) (Dead) by LRs and others, with companion matters, reported in (2003) 3 S.C.C. 272***, wherein similar situation had arose. There were serious lapses and absence of sufficient cause for the delay in bringing on record the legal representatives of some of the appellants of the same village despite the knowledge of their death. The Hon'ble Delhi High Court disposed of the appeals as abated. Therefore, the entire scheme under the Land Acquisition Act, 1894 was considered. Though in the present case the Reference was under the Right to Fair Compensation Act, yet the principles were same. It has been concluded in Para 34 of the Judgment as under:-

“ 34. In the light of the above discussion, we hold:-

(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the Court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.

(2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings, as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the Courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.

(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.

(4) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of

the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decreed passed in the proceedings vis-a-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other. ”

11. Taking note of the above said ratio and also the other provisions of law explained, it can be seen from the application of Reference to the competent authority filed by the present applicants / original respondents that all of them claim that they are joint owners of 7 R land. It appears that it is their ancestral land and each one would be having separate share, though the share of Bhaskar was not separated, it appears to be the tenor of the application. When the other parties have their share in the property, they had their own right also to seek the compensation. In other words, when there are lapses on the part of the present applicants in not informing the fact of death of Bhaskar, yet the other applicants have their own right in receiving the compensation and there is no delay on their part and therefore, we would consider the observations from Para

No.33 of ***Sardar Amarjit Sing Kalra (Dead) by LRs*** (supra),
which reads as under:

“ 33. Even assuming that the decree appealed against or challenged before the Higher forum is joint and several but deal with the rights of more than one recognized in law to belong to each one of them on their own and unrelated to the others, and the proceedings abate in respect of one or more of either of the parties, the Courts are not disabled in any manner to proceed with the proceedings so far as the remaining parties and part of the appeal is concerned. As and when it is found necessary to interfere with the judgment and decree challenged before it, the Court can always declare the legal position in general and restrict the ultimate relief to be granted, by confining it to those before the Court only rather than denying the relief to one and all on account of a procedure lapse or action or inaction of one or the other of the parties before it. The only exception to this course of action should be where the relief granted and the decree ultimately passed would become totally unenforceable and mutually self- destructive and unworkable vis-a-vis the other part, which had become final. As far as possible Courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, “*ubi jus ibi remedium*” (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice. ”

12. Here in the present case applicant No.1 – Giridhar Dattatray Patil appears to be the person who has not intimated the fact of death of Bhaskar to any authorities. He claims to be the general power of attorney but now he has intentionally kept quiet and has not brought on record the general power of attorney. Definitely said general power of attorney would not be bearing signature of Bhaskar. Giridhar has kept the legal heirs of Bhaskar in dark as it can be so inferred. The fact is intentionally kept vague as to whether the applicants have received the said compensation or not and whether the legal representatives of deceased Bhaskar have also received the compensation or otherwise. There is total suppression of facts by the applicants right from the inception. However, taking into consideration the ratio of the Constitutional Bench of the Hon'ble Supreme Court, referred above, the legal representatives of Bhaskar are necessary parties to the present appeal proceedings and therefore, the delay needs to be condoned. By taking help from the ratio in Paragraph No.33 of ***Sardar Amarjit Sing Kalra (Dead) by LRs*** (supra), we would say that for the total suppression of fact since beginning by the legal representatives of Bhaskar wherein it cannot be said that they were totally unaware about the proceedings when they are claiming to be the

owners of the acquired land, and they are not blaming applicant No.1 Giridhar – general power of attorney holder for not disclosing the fact that such compensation was allowed and then the Reference has been filed, and the fact that share of Bhaskar can be carved out, we hold that the legal representatives of deceased Bhaskar will not be entitled to get interest for the said period of 3308 days. So also we would keep the point open, as to whether in such situation there would be entitlement to get any interest even as per the order and decree of the Reference Court. At the cost of repetition, we would say that since the applicants have not come with clean hands and there is total suppression on their part, we are required to take this decision. Hence, following order:-

ORDER

(I) Civil Application No.17321 of 2022 stands partly allowed.

(II) The delay caused in bringing the legal representatives of deceased Bhaskar Dattatray Patil on record, stands condoned. The legal representatives of deceased Bhaskar Dattatray Patil be brought on record and the necessary amendment be carried out by the original appellants.

(III) However, it is made clear that the legal representatives of deceased Bhaskar Dattatray Patil will not be entitled to get the interest for the period of 3308 days. Further, the point is also kept open, as to whether the legal representatives of deceased Bhaskar Dattatray Patil would be entitled to get interest as granted by the Reference Court.

(IV) Place further Civil Applications for consideration on 22nd June 2023.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAY23