

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 107 OF 2019
IN
WRIT PETITION NO. 117 OF 2019**

Draupadi Shirodkar

... Petitioner

Versus

Collector of North Goa, Government of Goa,
Panaji.

... Respondents

Ms. Sonadevi Nishad, Advocate with *Ms. P. Nagvenkar,*
Advocate for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate
for the Respondents.

**CORAM: M. S. KARNIK, J
DATED: 5th JULY 2023**

ORAL ORDER

1. Heard learned counsel for the petitioner.
2. This is an application for bringing the legal representatives of the petitioner on record. The petitioner expired on 28.12.2015 leaving behind the legal heirs which are mentioned in paragraph 1 of the application. There is a delay of 1061 days in filing the application for bringing the legal heirs on record.
3. Learned Additional Government Advocate, Ms. Linhares, opposed the application. According to her, the delay is not explained satisfactorily. My attention is invited to the reply filed by the respondents, where it is stated that the petition stands abated and

there is no question of setting aside the abatement. It is further submitted that the petitioner cannot be brought on record as heir in this petition for the reason that the respondent granted lease of the property bearing Chalta no. 2, P.T. Sheet no. 17 situated at Ribander, to the late husband of the sole deceased-petitioner for a fixed period of five years without any intention to extend the period by renewing the lease agreement. It is contended that this property is required for public purpose and that the petitioner i.e. the late husband of the applicant was in unauthorised possession of Government land. It is further contended that it cannot be said that the applicant is the successor of her late husband and the right to sue continues in the applicant only because she is the wife of deceased petitioner.

4. Learned counsel for the applicant invited my attention to the rejoinder which has been filed in response to the affidavit in reply. The applicant has stated that she belongs to a scheduled tribe community and has very little knowledge as regards to legal matters. In paragraph 5 of the rejoinder it has been stated that she was never informed by the Advocate that the legal heirs are required to be brought on record. It is further stated that the applicants had been periodically questioned about their status in the matter and until that time, the Advocate informed the applicant that the application for bringing legal heirs on record had to be filed.

5. I find force in the submission of learned counsel that as the applicant is illiterate belonging to the Schedule Tribe, the explanation offered be regarded as satisfactory in the interest of justice. In my opinion, delay in filing the application for bringing the legal representatives on record can be condoned for the reasons stated in the application and the rejoinder. The objection of the learned Additional Government Advocate that the legal representatives do not have heritable interest in the property, can be left open to be decided at the time of hearing of the petition on merits. All contentions raised by learned Additional Government Advocate as reflected in the affidavit in reply are kept open to be raised at the appropriate stage when the present petition is heard on merits. The abatement is set aside. The application is allowed subject to cost.

6. The application is allowed in terms of prayers clauses (a), (c) and (d), subject to cost of Rs.1,000/-.

7. Consequent amendments to be carried out within one week from today.

8. Civil Application stands disposed of.

M. S. KARNIK, J

ANDREZA PEREIRA
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Date: 2023.07.05 19:11:12 +05'30'