

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL (ST.) NO.11633 OF 2022  
WITH  
INTERIM APPLICATION NO.1369 OF 2023  
WITH  
INTERIM APPLICATION NO.1368 OF 2023  
WITH  
INTERIM APPLICATION (ST.) NO.11639 OF 2022**

Dattatray Balkrishna Gaikar (Deceased)  
Thr. LRS. Vijay Dattatray Gaikar & Ors. ... Appellants  
**V/s.**  
The Special Land Acquisition Officer,  
Raigad & Ors. ... Respondents

Mr. Shriram S. Kulkarni i/by Mr. Sachin Chavan for the  
appellants.

Ms. Tanaya Goswami, AGP for the State.

**CORAM : AMIT BORKAR, J.**

**DATED : FEBRUARY 14, 2023**

**P.C.:**

**INTERIM APPLICATION (ST.) NO.11639 OF 2022**

1. The interim application is for condonation of delay in filing the appeal. The applicants are the legal representatives of the original claimants who died during the pendency of the reference. The applicants have stated on oath that they were not aware about the pendency of the proceedings.

2. For the said reason, delay in filing the first appeal is condoned. The interim application is allowed in terms of prayer clause (a).

**INTERIM APPLICATION NO.1369 OF 2023**

1. The application is for bringing the heirs and legal representatives of the original claimant on record. The original claimant died on 31<sup>st</sup> May 2013. The mother of the applicants also died on 30<sup>th</sup> March 2018. The applicants were not aware about the pendency of the reference proceedings before the District Court. They got knowledge of the judgment only through the local advocate after the dismissal of the reference.

2. For the said reason, the interim application is allowed in terms of prayer clause (a), (b) and (c).

**INTERIM APPLICATION NO.1368 OF 2023**

1. The legal representatives of the original claimant have filed present application seeking leave to file the appeal. It is undisputed that the applicants are the legal representatives of the original claimant who died during pendency of the reference.

2. In that view of the matter, the interim application is allowed in terms of prayer clause (a).

**FIRST APPEAL (ST.) NO.11633 OF 2022**

1. The appellants have filed present appeal challenging the judgment and award passed by the reference Court dismissing the claim of the appellant mainly on the ground that the appellant

failed to lead evidence in support of their claim.

2. The appellants have stated before this Court that original claimant died on 31<sup>st</sup> May 2013. The appellants were not aware about the pendency of the proceedings. Considering the nature of the proceedings and undisputed fact that the applicants are legal representatives of the original claimants whose land was acquired under the provisions of the Land Acquisition Act, 1894, the claimants have submitted before this Court that they have prima facie case on merits for enhancement of compensation. They have material evidence in their possession in support of their case of enhancement of compensation.

3. Considering the nature of the rights involved, I am satisfied that the appellants were not aware about the pendency of the proceedings before the learned reference Court. Due to death of original claimant on 31<sup>st</sup> May 2013, there was no one to represent the claimant. Therefore, in my opinion, the appellants need to be given opportunity to adduce the evidence in support of their claim of enhancement of compensation.

4. Hence, Following order:

a) The impugned judgment and award dated 18<sup>th</sup> January 2020, passed by the 2<sup>nd</sup> Joint Civil Judge, Senior Division, Alibag in L.A.R. No.20 of 2001 is quashed and set aside.

b) The proceedings are remanded back to the learned Civil Judge, Senior Division, Alibag which was permitted the appellants to lead oral evidence in support of their case. The learned reference Court shall thereafter decide the reference

in accordance with law.

5. The first appeal stands disposed of. No costs.

**(AMIT BORKAR, J.)**