



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

**961 CIVIL APPLICATION NO. 2001 OF 2025
IN FA/3028/2015**

THE EXECUTIVE ENGINEER DEPTT OF SINA KOLEAON PROJECT
OSMANABAD

VERSUS

BHAGWAT LIMBAJI PATIL (DIED) THR. LRS PRADEEP BHAGWAT
PATIL AND ORS

...

Mr. Gaikwad Anil M., Advocate for Applicant
Mrs. Chaitali Chaudhari Kutti, AGP for Respondents State
Mr. Abhijit S. More, Advocate for Respondent Nos. 2 and 3.

WITH

**X-OBJECTION NO. 171 OF 2024
IN FA/3028/2015**

BHAGWAT LIMBAJI PATIL AND ORS

VERSUS

THE STATE OF MAHARASHTRA AND ORS

...

Mr. More Abhijit S., Advocate for the Appellants
Mrs. Chaitali Chaudhari Kutti, AGP for Respondent State
Mr. Gaikwad Anil M., Advocate for Respondent claimants.

CORAM : Y. G. KHOBRAGADE, J.

Dated : 28th February, 2025

PER COURT :-

1. Heard Mr. Gaikwad, the learned counsel for the applicant/
Acquiring body, Mr. More Non-applicant 1A to 1D/Legal heirs of
original claimant and learned AGP for the Respondent State.

2. Under the present application, the Applicant Acquiring Body
prayed for condonation of delay of 1806 days caused while filing

the application for restoration and setting aside order of disposal of appeal being abated vide order dated 04.02.2020.

3. On face of record, on 08.05.2015, the appellant Acquiring Body had filed First Appeal No.3028 of 2015 along with application for condonation of delay and application for stay to the Judgment and Award dated 13.08.2014. It is a matter of record that, on 27.07.2015, this Court passed order in Civil Application No.8417 of 2015 in First Appeal (St.) No.14873 of 2015 (First Appeal No. 3028/2015) and had granted stay to the Judgment and Award on condition that the applicant Acquiring Body shall deposit entire amount of compensation within a period of 12 weeks from the date of order. On 09.10.2015, this Court passed an order and condoned the delay caused while lodging the appeal. Subsequently, the appeal was registered vide First Appeal No. 3028 of 2015. The Respondent/original claimant also filed Cross Objection No. 171/2024.

4. On 11.01.2016, this Court passed an order in Civil Application No. 16501 of 2015 and other connected matters including Civil Application No. 16569 of 2015 in First Appeal No. 3028 of 2015 and permitted the claimants to withdraw an amount

of Rs.2.2 lakhs per hectare as compensation without surety along with statutory benefits after giving undertaking. Further, the claimants were also allowed to withdraw 25% amount after giving solvent surety.

5. On 07.02.2017, the present appeal along with other connected appeals were Admitted, however, during pendency of appeal, the original claimant Bhagwat Limbaji Patil died on 08.04.2017. Thereafter, on 23.03.2018, the legal heirs of the Respondent/original claimant have filed Civil Application No. 4078 of 2018 in Cross Objection (St)5950 of 2017 in FA No.3028 of 2015.

6. On 23.03.2018, this Court, (Coram: Sunil P Deshmukh,J.) passed the following order in Civil application No. 4078 of 2018, which reads as under:

ORDER

“1. This application has been moved by legal heirs of deceased respondent No. 1-Bhagwat Limbaji Patil for bringing them on record of first appeal filed by the acquiring body. During pendency of appeal, respondent No. 1-original claimant died.

2. Learned counsel for appearing parties do not have any particular objection to grant the application.

3. In view of the same, civil application is allowed in terms of prayer clauses (B) and (C).

4. The appellant is permitted to bring on record the legal heirs of deceased respondent No. 1 – original claimant as shown in this civil application.

5. The delay caused in bringing legal heirs of deceased respondent No. 1 in appeal on record of first appeal stands condoned. Abatement of appeal, if any, is set aside.

6. Appellant to carry out amendment to title clause of memorandum of appeal immediately.

7. Civil application is accordingly disposed of.

7. On 28.02.2019, this Court (Coram: P. R. Bora, J.) passed an order and had referred the present first appeal along with other connected first appeals for settlement before the Lok Adalat which was scheduled on 17.03.2019. However, First Appeal No. 3028 of 2015 remained un-referred to the Lok Adalat.

8. On 04.02.2020, this court (Coram K. K. Sonawane, J.) passed the following order:

ORDER

“Mr. Anil M. Gaikwad, learned counsel on instructions submits that there is change in the Panel of Advocates appearing for appellant-Acquiring Body. Mr. Shirish G.

Sangle, learned counsel is not on the Panel of Advocate of appellant-Acquiring Body. Mr. Gaikwad, learned counsel has filed his appearance on behalf of appellant – Acquiring Body. Therefore, the appearance of Mr. Shirish G. Sangle, learned counsel appearing for appellant-Acquiring Body stands discharged.

2. This Court under Order dated 23rd March, 2018 allowed the appellant to bring legal heirs of deceased original claimant-respondent No.1 Bhagwat s/o. Limbaji Patil. But, the appellant-Acquiring Body did not take any precaution with due diligence to carry out the amendment within stipulated period for bringing legal heirs of deceased respondent- claimant on record. Admittedly, the proceeding of First Appeal came to be abated against the deceased respondent-claimant. The rest of respondents i.e. State of Maharashtra and Special Land Acquisition Officer are formal party in the present matters. In that circumstances, there is no propriety to keep the matters alive on board, which have already been abated following death of respondent No.1-original claimant Bhagwat s/o. Limbaji Patil. The proceeding of First Appeal No. 3028 of 2015 stands disposed of being abated. The connected proceedings of Civil Applications vide CA/13870/2018 IN FA/3028/2015 and CA/3228/2019 IN FA/3028/2015 also hereby disposed of. However, the proceeding of X-OBJST/5950/2017 IN FA/3028/2015 filed on behalf of deceased original claimant – Bhagwat s/o. Limbaji Patil, be segregated from the aforesaid proceedings accompanied with application for condonation of delay and list the same for further process in due course.

9. Subsequently, the Respondent-claimant/applicant to Cross Objection filed Civil Application No. 11758 of 2024 and prayed for the issuance of a direction to the Registry of this Court to remit

deposited compensation amount by the Appellant/Acquiring Body in First Appeal No. 3028 of 2015 to the learned Civil Judge, Senior Division, Paranda District Osmanabad.

10. On 14.12.2024, this Court (Coram: Nitil B. Suryawanshi, J.) passed an order in Civil Application No. 11758 of 2024 in First Appeal No. 3028 of 2015 and granted said application in terms of prayer Clause B.

11. On the face of record it appears that, legal heirs of Respondent/claimant in First Appeal No. 3028 of 2015, filed application No. 4078 of 2018 and prayed for permission to bring themselves on record as legal heirs of the original claimant. No doubt, vide order dated 23rd March, 2018 the legal heirs of deceased respondent/claimant are permitted to bring them as legal heirs of original claimant in First Appeal and abatement was set aside. However, as per Clause (6) of order, dated 23rd March, 2018, the Appellant/Acquiring Body failed to carry out amendment to the cause title of the appeal immediately. Therefore, on 04th February, 2020, this Court passed order in First Appeal No. 3028 of 2015 and observed that first appeal came to be disposed off being abated as against the respondent/original claimant.

12. Needless to say that, vide order dated 23rd March, 2018, this Court permitted the legal heirs of respondent/claimant to bring their names being legal heirs of original claimant and abatement was set aside but the Appellant/ Acquiring Body failed to carry out the amendment. Under these circumstances, parties to the first appeal could have brought to the notice of this Court that the order of abatement had been set aside, but it appears that no such fact was conveyed to the Court, hence, later on this Court passed an order and abated the appeal. It is settled proposition of law that, when the abatement of an appeal has already been set aside, the appeal cannot be abated again merely because the appellant failed to carry out the amendment within the time limit but it could have been dismissed for want of prosecution or for failure to carry out the necessary amendment. Therefore, it will be just and proper to permit the Acquiring Body to carry out necessary amendment as per order dated 23.03.2018 within a period of two weeks from today. In view of discussion, Civil Application No. 2001 of 2025 is hereby allowed and disposed off accordingly.

(Y. G. KHOBRAGADE, J.)