

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5681 OF 2025

Yashwant Harjeevan Kirad (since Deceased)
And Ors

...Petitioners

Versus

The State Of Maharashtra Through Govt.
Pleader And Ors.

...Respondents

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2026.03.07
18:18:59 +0530

Mr. Amogh Karandikar, for the Petitioners.

Mr. Ketan Joshi, 'B' Panel Advocate, a/w Alka Nadkarni, AGP
for the State – Respondent Nos.1 and 2.

Mr. Rajdeep Khadapkar, for Respondent No.3 – Pune Municipal
Corporation.

CORAM: N. J. JAMADAR, J.

DATED: 5th MARCH, 2026

Oral Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 13th February, 2025, whereby the learned Judge, Court of Small Causes, Pune, in an application for apportionment of the compensation in respect of the acquisition of the land, under Section 31 of the Land Acquisition Act, 1894, partly allowed the said application and directed that, applicant No.2 Shankar Kirad and applicant No.5 Jagdish Kirad be paid 1/5th share out of the compensation deposited by respondent No.1 therein and

declined to disburse the amount of compensation to the rest of the applicants.

3. On 10th October, 2016, the Special Land Acquisition Officer No.15, Pune, passed an award under Section 11 of the Land Acquisition Act, 1894 in respect of the lands acquired for the road widening project from Rasta Peth to Sant Kabeer Chowk and Sant Kabeer Chowk to A.D. Camp, Pune. As there was a dispute in respect of apportionment of the amount of compensation in respect of 174 interested persons, the Land Acquisition Officer made a reference to the District Court under Section 31 of the Land Acquisition Act, 1894. A list of the claimants/interested persons and the amount of compensation to be apportioned in respect of the respective properties was annexed to the said reference.

4. The petitioners property i.e. Survey No.516 was acquired for the said project. The names of the petitioners were included at Sr. No.147 to 151 of the said list. In addition, the names of two tenants of the commercial premises were shown at Sr. Nos.152 and 153. Total amount of compensation payable was shown at Rs.81,91,080. By a subsequent communication dated 8th January, 2025, it was further clarified that petitioner Nos.1 to 5 were entitled to a sum of Rs.81,51,080/-.

5. By the impugned order the learned Judge was persuaded to partly allow the application and disburse a sum of Rs.16,30,216/- each to petitioner No.2 Shankar Kirad and petitioner No.5 Jagdish Kirad, after deducting the amount towards the Income Tax, on the premise that petitioner Nos.2 and 5 were entitled to 1/5th share each in the said amount of compensation. Since petitioner No.1 Yashwant, petitioner No.3 Harsishchandra and petitioner No.4 Shantabai had passed away, the learned Judge declined to disburse the amount on the ground that though the legal representatives of the deceased petitioner Nos.1, 3 and 4 were brought on record, yet, the petitioners had not placed on the record of the Court material to show that the said legal representatives, who were brought on record, were the only legal representatives of the respective deceased and there was no other legal representative. It was, *inter alia*, observed that the legal heirship certificates were not placed on record.

6. Being aggrieved, the petitioners have preferred this petition.

7. The grievance of the petitioners is two fold. One, the amount of compensation was required to be apportioned in four shares and not five, i.e. among the deceased petitioner No.1

Yashwant, deceased petitioner No.2 Shankar, deceased petitioner No.3 Harishchandra and deceased petitioner No.4 Shantabai. Petitioner No.5 Jagdish is the son of deceased petitioner No.3 Harishchandra and was, thus, not entitled to a separate share in the amount of compensation. Two, the learned Judge ought not to have declined to disburse the amount of compensation in favour of the legal representatives of the deceased petitioner Nos.1, 3 and 4 as those legal representatives were brought on record pursuant to the order passed by the reference Court.

8. On the aspect of the apportionment of the amount of compensation in four shares, there does not appear much controversy. Petitioner No.2 Shankar had two brothers Yashwant; deceased petitioner No.1, Harishchandra deceased petitioner No.3, and a sister Shantabai; the deceased petitioner No.4. Jagdish, petitioner No.5, is the son of deceased petitioner No.3 Harishchandra. It is pertinent to note, Jagdish has also filed the instant petition. The amount of compensation was, thus, required to be divided in four strips. The learned Judge was, thus, in error in apportioning the amount of compensation in five shares. Undoubtedly Jagdish would be entitled to a share in the amount of compensation which would fall to the share of

Harishchandra (deceased petitioner No.3), but not in his independent right as a co-sharer with Yashwant, Shankar and Shantabai.

9. On the second count, the learned Counsel for the acquiring body and respondent Nos.1 and 2 State submitted that, the learned Judge was justified in declining to disburse the amount of compensation as there was no material to show that the legal representatives of the deceased petitioner Nos.1, 3 and 4, who were brought on record, there were only legal representatives of respective deceased petitioners. The petitioners ought to have produced evidence to substantiate their claim that the legal representatives, who were brought on record were the only legal representatives and there was no other legal representative of the respective deceased. The failure of the petitioners to produce the legal heirship certificate was pressed into service.

10. This Court finds that by an order dated 29th June, 2022 the Reference Court had permitted the petitioners to bring the legal representatives of deceased petitioner No.1 Yashwant, deceased petitioner No.3 Harishchandra and deceased petitioner No.4 Shantabai. The consequential amendment was also carried out in the application. It appears that applicant Nos.1A to 1E,

being the wife, two sons and two daughters of deceased Yashwant were brought on record. Likewise, the wife and son of deceased Harishchandra were brought on record, and husband and daughter of Shantabai, the deceased petitioner No.4, were brought on record.

11. The apprehension on the part of the respondents which found favour with the learned Judge was that, there might be other legal representatives of the deceased petitioner Nos.1, 3 and 4. This apprehension could have been taken care of by the learned Judge by disbursing the amount subject to the respective legal representatives of the deceased petitioner Nos.1, 3 and 4 submitting an undertaking, on an affidavit, and Indemnity Bond to indemnify the Court against the claim of any person, who asserts his rights as the legal representative of the deceased petitioner Nos.1, 3 and 4.

12. In the aforesaid view of the matter, the Court is inclined to allow the petition subject to certain conditions.

13. Hence, the following order:

: O R D E R :

(i) The petition stands partly allowed.

- (ii) The impugned order to the extent it apportions the amount of compensation i.e. Rs.81,51,080/- in five shares stands modified as under:

The amount of compensation be apportioned by the Reference Court in four shares i.e. one share to petitioner No.2 Shankar and one share each to the legal representatives of deceased petitioner No.1 Yashwant, petitioner No.3 Harishchandra and petitioner No.4 Shantabai.

- (iii) The amount of compensation falling to the share of deceased petitioner Nos.1, 3 and 4 be disbursed to the legal representatives of respective deceased petitioners, who have been brought on record in terms of the order passed by the Reference Court on 29th June, 2022, subject to the following condition:

Each of the legal representatives of respective deceased petitioners shall file an undertaking, on an affidavit, to bring back such amount as may be directed by the Court alongwith interest at such rate as may be directed, and an Indemnity Bond to the satisfaction of the Reference Court to indemnify the Court against the claim of any

person, who asserts that he is the legal representative of the respective deceased petitioner.

- (v) The necessary consequential orders be passed by the Reference Court within a period of two weeks from the date of communication of this order.

The petition stands disposed.

[N. J. JAMADAR, J.]