

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.11771 OF 2025
IN
FIRST APPEAL (ST.) NO.25914 OF 2025

Maharashtra Krishna Valley
Development Corporation

... Applicant

Vs.

ATUL
GANESH
KULKARNI

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by ATUL GANESH
KULKARNI
Date: 2026.09.22
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1. Maruti Laxman Khedkar
2. The Special Land Acquisition
Officer No.6, Pune
3. The Collector, Pune

... Respondents

Mr. Nitin Gaware Patil with Mr. Shivkumar J. and Ms.
Rupsee Nerlikar for the Appellant/Applicant.

Ms. Amrita Kharkar with Ms. Sayali Bhosale i/by P.H.
Potnis for Respondent No.1.

Mr. A.R. Patil, Advocate. for Respondent Nos.2 and 3-
State.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 8, 2026.

PRONOUNCED ON : SEPTEMBER 22, 2026

JUDGMENT:

1. By Interim Application No. 11771 of 2025, the Appellant/Applicant is seeking condonation of delay of 2958 days in filing the present First Appeal.

2. The Applicant states that there has been delay in filing the present First Appeal. According to the Applicant, the delay was not intentional. It occurred because of circumstances which were beyond its control. The Applicant is a statutory corporation and before filing any proceeding before the competent Court, it has to follow various administrative stages. The movement of the file from one authority to another and the process of obtaining the necessary approvals caused some delay. The Applicant states that such delay was part of the administrative process and was not deliberate. It is further stated that the dispute is an old one and considerable time was required for collecting and arranging all the documents relating to the present matter. The file had to pass through several stages for obtaining approval to file the present First Appeal. According to the Applicant, the decision to file the appeal was taken only after examining the merits of the dispute. The Applicant has relied upon the Covid-19 pandemic and has stated that the functioning of the Corporation was affected from 20 March 2020 until about the middle of 2022, which further contributed to the delay in filing the present First Appeal.

3. The Applicant submits that the movement of the file at different stages for obtaining sanction and approval is set out in the application. The learned District Judge, Pune, passed the judgment and Award in Land Reference No. 16 of 2002 on 22 March 2017 and awarded compensation in respect of the acquired land. The Applicant states that during the period from 20 March 2020 to the middle of 2022, its functioning was affected because of the Covid-19 pandemic. The Corporation had to work with

limited manpower and under various restrictions. The functioning of the Courts was affected during this period. The Applicant further relies upon the order dated 23 March 2020, by which the Supreme Court directed that the period of limitation prescribed under the general law of limitation or under any special law, whether Central or State, for filing petitions, applications, suits, appeals and other proceedings, whether such period was condonable or not, would stand extended from 15 March 2020 until further orders.

4. The Applicant further states that on 6 May 2020, the Supreme Court extended the periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under Section 138 of the Negotiable Instruments Act, 1881 with effect from 15 March 2020 until further orders. It was directed that where the period of limitation had expired after 15 March 2020, the period from 15 March 2020 until the date on which the lockdown was lifted in the concerned jurisdiction would be extended for a further period of 15 days. Thereafter, on 27 April 2021, because of the fresh increase in Covid-19 cases, the Supreme Court restored its earlier order dated 23 March 2020, along with the order dated 8 March 2021. The Supreme Court further suspended the period of limitation prescribed under general or special laws in respect of judicial and quasi-judicial proceedings until further orders, by exercising powers under Article 142 read with Article 141 of the Constitution of India. The matter was thereafter listed on 19 July 2021. According to the Applicant the period of limitation from 15 March 2020 remained suspended

until the same was restored.

5. The Applicant states that on 18 November 2021, the Special Land Acquisition Officer informed the Applicant about the judgment passed in Land Reference No. 16 of 2002 and directed the Applicant to release the amount payable pursuant to the said judgment. On 24 November 2022, the Applicant communicated with the Special Land Acquisition Officer and expressed its willingness to deposit the amount. It requested that the amount payable be calculated. On 30 November 2022, the Special Land Acquisition Officer calculated the amount and communicated the same to the Applicant. Thereafter, on 5 June 2023, Bhama Ashked Division communicated the said details to Pune Irrigation Project Circle. On 23 June 2023, Pune Irrigation Project Circle forwarded the matter to the Regional Office of the Applicant. On 12 July 2023, Bhama Ashked Division sought advice from Pune Irrigation Project Circle as to whether a First Appeal should be filed. On 7 August 2023, the Executive Engineer of the Applicant met the Legal Advisor. Thereafter, on 21 August 2023, Bhama Ashked Division informed Pune Irrigation Project Circle that Darkhast proceedings had been filed and requested that the First Appeal be filed immediately.

6. The Applicant further states that on 15 September 2023, its Legal Advisor advised that a cross appeal should be filed. On 11 October 2023, a communication was sent to the Advocate's office for filing the cross appeal. A further communication was sent to the Advocate's office on 27 December 2023 for the same purpose. On 31 January 2024, the Advocate's office sent an email to the

Applicant requesting certified copies. On 10 February 2024, another email was sent by the Advocate's office requesting details to explain the delay in filing the appeal. On 13 February 2024, Bhama Ashked Division sent an email to Temghar Sub-Division seeking the required details. On 6 March 2024, Temghar Sub-Division informed Bhama Ashked Division by email that an application for certified copies had been made on 28 February 2024.

7. The Applicant further states that on 27 March 2024, the Advocate's office sent a reminder seeking the details required for explaining the delay. The certified copies were received on 1 April 2024. On 15 April 2024, the certified copies were handed over to the Advocate's office. Thereafter, on 1 July 2024, the details regarding the delay were sent to the Advocate's office. On 12 July 2024, Bhama Ashked Division directed Temghar Division to meet the Advocate personally. On 1 October 2024, a representative of the Applicant Corporation visited the Advocate's office and the draft appeal was settled. Thereafter, on 15 October 2024, 18 October 2024, 20 November 2024, 9 December 2024 and 2 January 2025, the Advocate's office issued letters to the Applicant requesting payment of Court Fees and miscellaneous expenses required for filing the First Appeal. On 5 March 2025, the letter along with the amount towards Court Fees and miscellaneous expenses was received from the Applicant. Consequently, the present First Appeal came to be filed on 15 April 2025.

8. Mr. Patil, learned Advocate for the Appellant, submitted that apart from Section 141 of the Code of Civil Procedure, 1908,

Section 53 of the Land Acquisition Act makes the provisions of the Code of Civil Procedure applicable to the proceedings before the Reference Court under Section 18 of the Land Acquisition Act. He submitted that for the purpose of such reference, the claimant has to be treated as the plaintiff and the Land Acquisition Officer as the defendant. Therefore, according to him, it was the responsibility of the claimant to bring the legal representatives of the claimant on record. He submitted that in the present case, Respondent No.1 was the sole claimant and admittedly died before the final arguments could be made in the reference proceedings.

9. Mr. Patil distinguished the judgment of this Court in the case of *Special Land Acquisition Officer (2) vs. Harichandra Ramji Patil*, 2000 (1) Bom. C.R. 569. He submitted that in that case, this Court had considered the provisions of Order XXII Rule 10A of the Code of Civil Procedure, which requires the Advocate of a deceased person to inform the other side about the death of his client. Mr. Patil, learned Advocate, relied upon the judgments in *Ganpat Hiranman Chavan, deceased through LRs vs. The District Magistrate, Jalgaon*, Writ Petition No.8831 of 2017 (Aurangabad Bench), decided on 12 July 2017, *Dy. Collector and Land Acquisition Officer vs. Patel Parsottambhai Pragjibhai*, 2019 SCC OnLine Guj 7146, *Chander & Others vs. Mauji & Others*, 1988 SCC OnLine Del 234, and *Smt. Ram Piari vs. Union of India*, 1977 SCC OnLine Del 117.

10. Per contra, Ms. Kharkar, learned Advocate for Respondent No.1, submitted that the reference under Section 18 of the Land Acquisition Act cannot be treated as having abated merely because

the claimant died. According to her, it was the responsibility of the State Government or the Special Land Acquisition Officer to bring the legal representatives of the claimant on record. She submitted that in proceedings under Section 18 of the Act, the Special Land Acquisition Officer is the applicant and has control over the proceedings. Therefore, according to her, it was his responsibility to bring the legal representatives of the claimant on record.

11. Relying upon the judgment of the Supreme Court in *Khazan Singh vs. Union of India*, (2002) 2 SCC 242, Ms. Kharkar submitted that the Civil Court is required to pass an award in answer to the reference made by the Collector under Section 18 of the Act. She submitted that if a party, after receiving notice from the Civil Court, does not participate in the enquiry, the consequences would be at the risk of that party because the Award may be passed to its disadvantage. Therefore, such non-participation does not give the Civil Court jurisdiction to dismiss the reference for default. She submitted that the strict requirements of Order XXII would not apply in the same manner to proceedings under the Land Acquisition Act. According to her, a decree passed against a dead person may be a nullity, but the position is different when an order or Award is passed in favour of a deceased person. She submitted that, unless the Applicant gives a proper explanation for the entire period of delay, the delay cannot be condoned, particularly when the Award passed by the Reference Court is not a nullity.

12. In support of her submissions, Ms. Kharkar relied upon the judgments in *N. Jayaram Reddy & Others vs. Revenue Divisional*

Officer & Land Acquisition Officer, Kurnool, (1979) 3 SCC 578, *K.V. Gopalan vs. Nandini Narayanan & Others*, 2014 SCC OnLine Ker 28693, *State of Punjab & Others vs. Gurudev Singh & Others*, (1991) 4 SCC 1, *Abdul Azeez Sahib vs. Dhana-bagiammal & Others*, 1981 SCC OnLine Mad 254, *Vikram Bhalchandra Ghongade vs. State of Maharashtra & Others*, 2025 SCC OnLine SC 2360, *Abdul Aziz vs. Regional Manager, Indian Oil Corporation & Others*, Civil Writ Petition No.19565 of 2015, decided on 17 February 2026, and *Special Land Acquisition Officer (2) vs. Harichandra Ramji Patil*, 2000 (1) Bom CR 569.

13. I have considered the submissions made by the learned Advocate for the Appellant/Applicant and the learned Advocate for Respondent No.1. I have considered the judgment and Award passed by the learned District Judge, Pune in Land Reference No.16 of 2002, the explanation given by the Applicant for the delay of 2958 days, and the judgments relied upon by both sides. The questions which arise for consideration are firstly, whether the death of Respondent No.1, who was the sole claimant before the Reference Court, before the matter was finally heard and decided, resulted in abatement of the reference and whether the Award thereafter passed in his favour is a nullity; and secondly, whether the said circumstance by is sufficient to condone the delay in filing the present First Appeal.

Effect of death of the sole claimant:

14. There is no serious dispute about the basic facts. Respondent No.1 was the sole claimant in the reference. He died during the

pendency of the reference proceedings and before arguments were heard. His legal representatives were not brought on record before the learned Reference Court passed the judgment and Award dated 22 March 2017. The Award was passed in the name and in favour of a person who was dead.

15. The first submission of the Applicant is that the legal representatives of the deceased claimant were required to be brought on record and that, in their absence, the proceeding could not have been continued. This submission finds support from the judgment of this Court in *Harichandra Ramji Patil*. In paragraph 9 thereof, it has been held that Section 53 of the Land Acquisition Act, read with Section 141 of the Code of Civil Procedure, makes the provisions of Order XXII applicable to a reference proceeding. The Court held that there is no inconsistency between Order XXII and the provisions of the Land Acquisition Act. In paragraph 10 of *Harichandra Ramji Patil*, this Court considered upon whom the responsibility lies to bring the legal representatives of a deceased claimant on record. It held that once a person approaches the Court for enhancement of compensation, the position is similar to that of a plaintiff in a suit and the duty to take steps for substitution is on the claimant side. The Court noticed that the burden of establishing that the compensation offered by the acquiring authority is inadequate lies upon the claimant.

16. The same principle has been explained by the Full Bench of the Delhi High Court in *Chander*. In paragraph 23, after referring to Section 26 and Section 54 of the Land Acquisition Act, the Court held:

“Such an appeal would be governed by the provisions of Code of Civil Procedure. We are in respectful agreement with the reasoning and view taken by the Division Bench of this Court in “*Union of India v. Rameshwar Nath* (supra) that an appeal against a decree of a Court upon a reference under Section 18 of the Act is an appeal under the Code of Civil Procedure and the provisions of Order 22 of the Code apply to such an appeal and that the limitation applies to such an appeal.”

17. The Full Bench further held that the Code of Civil Procedure governs not only the right of appeal but the procedure to be followed in such appeal, including Order XXII and limitation. Thus, the submission that a reference under the Land Acquisition Act is not technically a suit and Order XXII cannot apply, cannot be accepted.

18. In paragraph 24 of *Chander*, the Full Bench answered that the provisions of the Limitation Act and Order XXII are applicable to proceedings under Section 30 and that there is no difference between an appeal arising from Section 18 proceedings and an appeal arising from Section 30 proceedings for the purpose of abatement. The reasoning of *Ram Piari* was held applicable. Therefore, there is sufficient judicial basis for holding that the provisions relating to death, substitution and abatement apply to the present reference.

19. The decision in *Patel Parsottambhai Pragjibhai* is concerned with a claimant dying during pendency of a reference. In paragraph 42, the Court held:

“42. From conjoint reading of above mentioned provision it

comes out that if sole claimant or one of the claimants die during pendency of the proceedings before Reference Court then the heirs/legal representatives of deceased claimant (if they desire to continue the proceeding/reference) are obliged to take, steps in accordance with the procedure prescribed under Rule 3(or Rule 4, as the case may be) and Rule 10(A) of Order XXII of the Code.”

20. The Court thereafter held in paragraph 43:

“43. If the heirs and/or the legal representatives of any claimant (who died during pendency of the reference proceedings) fail to take steps in accordance with Rule 3(or Rule 4, as the case may be) then the reference (in case of sole claimant) qua the deceased claimant or the claim (in case where there are more than one claimant in the reference case) would abate (upon death of the claimant).”

21. These observations apply to the facts of the present case. Here there was a sole claimant. After his death, no legal representative was brought on record. Therefore, upon expiry of the prescribed period, the reference stood abated in the absence of an application to continue the proceeding through the legal representatives.

22. The contention of the learned Advocate for Respondent No.1 that the Special Land Acquisition Officer or the State ought to have taken steps to bring the legal representatives on record cannot be accepted in the form in which it is urged. The judgment in *Harichandra Ramji Patil* holds that the claimant side has the obligation to move for substitution. The fact that, as a matter of practice, the amendment in the reference may thereafter be carried out through the Government Advocate or the Land Acquisition

Officer does not shift the substantive responsibility of seeking continuation of the proceedings upon the legal representatives of the deceased claimant.

23. The reliance placed upon *Khazan Singh v. Union of India* does not take the case of Respondent No.1 any further. In *Khazan Singh*, the question before the Supreme Court was whether a reference under Section 18 could be dismissed for default merely because the claimant or his counsel did not remain present. The Supreme Court held that the Civil Court is required to answer the reference and cannot dismiss it merely for non-appearance of the claimant. The factual situation there was of a living claimant who did not appear before the Reference Court. It was not a case where the sole claimant had died and the legal representatives had failed to seek substitution. Therefore, *Khazan Singh* cannot be read as dispensing with the provisions of Order XXII in a case where the sole claimant has died. There is a material difference between absence of a living claimant and the complete absence of the party in whose favour the reference is required to be adjudicated. In the first situation, the Court may be required to answer the reference despite non-appearance. In the second situation, the Court has to first consider the legal consequence of death and the failure to bring the legal representatives on record.

Whether the Award is a nullity:

24. The next question is what is the legal effect of an Award thereafter passed in favour of the deceased sole claimant. The learned Advocate for the Applicant has placed reliance upon

Gurnam Singh. In paragraph 14, while referring to *Kiran Singh*, the Supreme Court held:

“6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.”

25. In *Gurnam Singh*, the Supreme Court then considered the case where the parties had died during the pendency of the second appeal and no legal representative had been brought on record. In paragraph 15, the Court answered the question whether the judgment passed in favour of and against dead persons was a nullity in the affirmative. In paragraph 17, it further held that when substitution is not sought within the prescribed period, the appeal abates automatically. In paragraph 20, the Court made it clear that before the appeal can be revived, the legal representatives must seek substitution, setting aside of abatement under Order XXII Rule 9 and, where necessary, condonation of delay under Section 5 of the Limitation Act. The sequence prescribed by the Supreme Court cannot be ignored. The Supreme Court has considered the same question in *Vikram Bhalchandra Ghongade*. The facts of that case are important. The appellants before the first appellate Court had died before the appeal was heard. Their legal representatives had not been brought on record. The first appellate Court nevertheless heard and decided the

appeal. The Supreme Court held that the protection under Order XXII Rule 6 was not available because the deaths had taken place before the hearing of the appeal. It held the judgment in favour of the deceased appellants to be a nullity and held that the decree of the trial Court continued to be enforceable. The decision in *Vikram Bhalchandra Ghongade* is of considerable significance because the Supreme Court dealt with an adjudication made after the death of the party who had invoked the jurisdiction of the appellate Court. The Court considered the fact that 90 days had not expired in one of the cases before the appellate decision was pronounced, but nevertheless held that the material fact was that the appellants were dead when the appeal was heard and decided. The judgment was consequently held to be a nullity.

26. The Applicant has considerable force in contending that an adjudication made after the death of the sole claimant, in circumstances where his legal representatives were not before the Court and the reference had abated, cannot be treated as binding upon the estate of the deceased claimant. The defect is not a mere error in appreciation of evidence or procedural irregularity. The person in whose favour the adjudication is made was no longer before the Court and the right to continue the proceeding had not been represented through his legal representatives. The other side of the matter cannot be ignored. The learned Advocate for Respondent No.1 has relied upon *K.V Gopalan*, where a learned Single Judge of the Kerala High Court observed that a decree passed in favour of a dead person is an irregularity and not a nullity and that such decree may have to be set aside by

appropriate proceedings. The said decision explains that the position concerning a decree in favour of a dead person had been treated differently from a decree against a dead person.

27. In my view that principle cannot be mechanically applied to the present facts after considering the later decision of the Supreme Court in *Vikram Bhalchandra Ghongade*. Here the issue is not merely that the Reference Court inadvertently pronounced an Award in the name of a claimant who had died. The claimant had died before the hearing was completed. He was the sole claimant. No legal representative was brought on record. The reference had consequently abated. Thereafter the Reference Court proceeded to pronounce an Award in favour of the deceased claimant. The defect goes beyond the question whether the Court was informed about the death. The proceeding had ceased to remain pending against a living party capable of prosecuting the claim, unless the abatement was set aside and the legal representatives were brought on record.

28. This conclusion is consistent with paragraph 46 of *Patel Parsottambhai Pragjibhai*, where the Gujarat High Court considered the situation where a claimant dies before the Award and the reference in respect of that claimant stands abated. It held that, so long as the abatement is not set aside and the judgment and Award is not modified so as to bring the heirs on record, the heirs cannot proceed with an appeal against the Award passed in respect of the deceased person. In paragraph 47, the Court further held that the Court before which the reference was pending at the time of death is the Court competent to set aside the abatement.

This reasoning is applicable here. There is an important distinction between an Award which is merely irregular because the Court was unaware of the death and an Award passed after the proceeding had abated because no legal representative had been brought on record. In the present case, it is the second situation which arises. The death occurred during the reference. The sole claimant was not substituted. The prescribed period expired. Thereafter, the Award was passed. Therefore, the Reference Court proceeded to conclude the reference after the proceeding had abated.

29. Considering the above authorities together, I am of the view that the Award dated 22 March 2017, insofar as it was passed in favour of the deceased sole claimant after the reference had abated and without bringing his legal representatives on record, is a nullity. It cannot be treated as a valid Award merely because it was pronounced by a competent Reference Court. The jurisdiction to decide the reference had attached in the lifetime of the claimant, but the proceeding could not continue after his death without compliance with Order XXII and without setting aside the abatement. The subsequent Award did not acquire legal force against the estate merely by reason of its pronouncement.

Effect of nullity upon limitation:

30. Having held that the Award passed by the Reference Court in favour of the deceased sole claimant is a nullity, the next question is whether the delay of 2958 days in filing the present First Appeal can prevent the Applicant from challenging the said Award. In my

view, it cannot, for the reasons which follow. Ordinarily, when a party wants to challenge a judgment, decree or Award after the period of limitation, the party is required to show “sufficient cause” for the delay under Section 5 of the Limitation Act. This is because the judgment or decree is otherwise a valid adjudication and, after the period prescribed by law, the opposite party gets a right to rely upon its finality. But the position is different where the adjudication is a nullity. A nullity does not become a valid adjudication only because some period has passed. The defect goes to the very authority and foundation of the Court's adjudication. The settled principle in this regard is that a decree which is a nullity can be questioned whenever and wherever it is sought to be enforced or relied upon. In *Kiran Singh*, as quoted by the Supreme Court in *Gurnam Singh*, the following principle has been laid down:

“6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.”

31. The expression “whenever and wherever” has significance. It means that where the defect goes to the root of the jurisdiction of the Court, such defect is not cured merely because the person affected did not challenge the decree immediately. At the same time, it is necessary to keep in mind the distinction between a

nullity and an erroneous decree. Every wrong order is not a nullity. If the Reference Court had jurisdiction over the parties and the subject matter, but had wrongly appreciated the evidence, wrongly applied the law or awarded excessive compensation, the Award may be wrong, but it would not for that reason become a nullity. Such an Award has to be challenged within the period prescribed by law and, if the appeal is filed late, sufficient cause for the delay has to be shown. The present case is not of that nature. The sole claimant had died during the pendency of the reference and before the matter was heard and decided. No legal representative was brought on record. Even thereafter, the Reference Court proceeded to hear the matter and passed the Award in favour of the person who had died. Thus, the Applicant is not merely questioning the correctness of the compensation awarded by the Reference Court. The Applicant is questioning whether the Reference Court could have proceeded to decide the claim at all in the absence of the sole claimant and in the absence of his legal representatives.

32. The principle stated in *Gurdev Singh* needs to be considered. The Supreme Court, after referring to *Smith v. East Elloe Rural District Council*, observed:

“An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

33. This principle means that a person cannot treat every order as void without having its invalidity established in the proper

proceedings. It does not mean that an order which is found to be a nullity becomes valid merely because the limitation period has expired. Therefore, once the competent Court examines the matter and finds that the adjudication is a nullity, the question of delay has to be considered keeping that finding in view.

34. Prof. Wade, as noticed in *Gurdev Singh*, has stated:

“The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the ‘void’ order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another.”

35. Therefore, the Court has first to decide whether the defect is a nullity or only an error or irregularity. If it is an ordinary error, limitation applies. If it is a true nullity affecting the authority of the Court, the position is different. In the present case, the defect is not merely an error committed while deciding the reference. The sole claimant had ceased to be alive before the Reference Court heard and decided the matter. No legal representative was brought on record. The Reference Court nevertheless passed the Award in favour of the deceased claimant. The question is not whether the Reference Court correctly or incorrectly determined the compensation. The question is whether an Award could be passed in favour of a person who was dead and whose legal

representatives were not before the Court.

36. This position receives further support from *Vikram Bhalchandra Ghongade* . In that case, the appellants had died before the first appeal was heard and decided. The Supreme Court did not accept the argument that the appeal remained valid merely because the period of 90 days for bringing the legal representatives on record had not expired. The Supreme Court held:

“The judgment pronounced in the first appeal on 20.10.2010 was, thus, in favour of the parties who were no more alive. The said adjudication amounted to a nullity and the same did not have the force of law.”

37. The Court further held:

“The appellant is justified in contending that the decree passed by the first appellate Court was a nullity as it was passed in favour of the appealing parties, who had expired prior to the appeal being heard and decided.”

38. The above observations show that the fact that the statutory period for substitution had not expired at the time of the judgment does not by make the adjudication valid. What is important is that the parties in whose favour the adjudication was made were dead when the matter was heard and decided. The decision in *Gurnam Singh* explains the effect of a decree which is a nullity. In paragraph 21, the Supreme Court held:

“It is a fundamental principle of law laid down by this Court in *Kiran Singh case* [*Kiran Singh v. Chaman Paswan*, AIR 1954 SC 340] that a decree passed by the court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral

proceedings whenever such decree is sought to be enforced by the decree-holder. The reason is that the defect of this nature affects the very authority of the court in passing such decree and goes to the root of the case. This principle, in our considered opinion, squarely applies to this case because it is a settled principle of law that the decree passed by a court for or against a dead person is a “nullity” (see *N. Jayaram Reddy v. LAO* [*N. Jayaram Reddy v. LAO*, (1979) 3 SCC 578] , *Ashok Transport Agency v. Awadhesh Kumar* [*Ashok Transport Agency v. Awadhesh Kumar*, (1998) 5 SCC 567] and *Amba Bai v. Gopal* [*Amba Bai v. Gopal*, (2001) 5 SCC 570])"

39. The Supreme Court has thus held that where the decree is a nullity, the defect affects the very authority of the Court and goes to the root of the case. The Respondent has relied upon paragraph 20 of *Gurnam Singh* and submitted that the legal representatives have to seek substitution, setting aside of abatement and condonation of delay, as may be required. There is no dispute about this procedure where the legal representatives seek to revive a proceeding which has abated. The Supreme Court has observed:

“In our considered view, the appeal could be revived for hearing only when firstly, the proposed legal representatives of the deceased persons had filed an application for substitution of their names and secondly, they had applied for setting aside of the abatement under Order 22 Rule 9 of the Code and making out therein a sufficient cause for setting aside of an abatement and lastly, had filed an application under Section 5 of the Limitation Act seeking condonation of delay in filing the substitution application under Order 22 Rules 3 and 4 of the Code beyond the statutory period of 90 days. If these applications had been allowed by the High Court, the second appeal could have

been revived for final hearing but not otherwise. Such was not the case here because no such applications had been filed.”

40. However, this observation has to be applied to the facts of that case. There, the legal representatives were seeking revival of an appeal which had abated. They wanted the appeal to continue and to be heard on merits. Therefore, the procedure under Order XXII was necessary. The present case is different. The Applicant is not seeking to revive the reference by merely asking the Court to ignore the abatement. The Applicant is challenging the Award on the ground that the Award was passed when the sole claimant was dead and no legal representative was before the Court. This distinction is material. Where a valid proceeding has abated, the legal representative seeking to continue that proceeding must follow the procedure provided by law for setting aside the abatement and condoning the delay, wherever necessary. But where the ultimate adjudication is alleged to be a nullity, the Court has to first examine that fundamental objection. If the Award is found to be a nullity, the mere passage of time cannot convert it into a valid Award. Otherwise, a proceeding which had no legal foundation at the time of adjudication would become valid only because the prescribed period had passed. Such consequence cannot follow from limitation.

41. The decision in *Perumon Bhagvathy Devaswom* requires consideration. The Supreme Court held that abatement takes place by operation of law upon expiry of the prescribed period and does not depend upon a separate order of the Court. It observed:

“5. Having regard to the wording of Rule 4, it is clear that when a respondent dies and an application to bring his legal representative on record is not made, abatement takes place on the expiry of the prescribed period of 90 days, by operation of law. Abatement is not dependent upon any judicial adjudication or declaration of such abatement by a judicial order. It occurs by operation of law. But nevertheless “abatement” requires judicial cognizance to put an end to a case as having abated. To borrow a phrase from Administrative Law (used with reference to void orders), an appeal bears no brand on its forehead that it has “abated”, nor does it close automatically on abatement. At some stage, the court has to take note of the abatement and record the closure of the case as having abated (where the deceased was a sole respondent) or record that the appeal had abated as against a particular respondent (if there are more than one and the cause of action survives against the others).”

42. Thus, the absence of an earlier order recording abatement does not by mean that the reference continued in a unaffected manner. The consequence of the death of the sole claimant and failure to bring his legal representatives on record has to be considered according to law. The decision in *Chander* is relevant. The Full Bench held that an Award under the Land Acquisition Act is treated as a decree and that the provisions of the Code of Civil Procedure, including Order XXII, apply to such proceedings. In paragraph 24, it held:

“(d) There is no difference between the appeal arising out of the proceedings under Section 18 and the proceedings arising out of Section 30 for the purposes of abatement of appeal.”

43. Similarly, in *Patel Parsottambhai Pragjibhai*, the Gujarat High Court held in paragraph 43:

“If the heirs and/or the legal representatives of any claimant (who died during pendency of the reference proceedings) fail to take steps in accordance with Rule 3(or Rule 4, as the case may be) then the reference (in case of sole claimant) qua the deceased claimant or the claim (in case where there are more than one claimant in the reference case) would abate (upon death of the claimant).”

44. Therefore, the death of the sole claimant had a legal consequence and the Reference Court could not ignore the absence of his legal representatives while proceeding to adjudicate the claim. The submission based upon *Khazan Singh v. Union of India* does not alter this position. In *Khazan Singh*, the Supreme Court held that a reference under Section 18 cannot be dismissed for default merely because the claimant does not appear. The Reference Court is required to answer the reference. But the facts of that case were different. It was not a case where the sole claimant had died before the hearing and no legal representative had been brought on record. Therefore, *Khazan Singh* cannot be understood as laying down that a Reference Court can pass an Award in favour of a person who was dead. Non-appearance of a living claimant and death of the sole claimant without substitution are two different situations. The first does not by stop the Court from answering the reference. The second raises the question of abatement and the very validity of the subsequent adjudication.

45. The Applicant's delay of 2958 days is substantial. If the Applicant was challenging a valid Award on merits, the Applicant

would have to give a satisfactory explanation for the entire delay. The administrative movement of the file, obtaining approvals, collection of old records, legal advice and the Covid-19 period would then have to be examined for deciding whether sufficient cause was made out. But that is not the only issue here. The Applicant is challenging the Award as a nullity. The long delay may show that the Applicant was not diligent. It may have relevance while considering the conduct of the Applicant. But lack of diligence cannot give legal validity to an adjudication which was a nullity when it was made. The same reasoning applies to the administrative steps relied upon by the Applicant. The Applicant states that the file moved through different authorities, approvals were obtained, the record was collected and thereafter the appeal was prepared. These facts may not satisfactorily explain every part of the delay. However, they cannot change the legal character of the Award.

46. If the Award is a nullity, no amount of administrative delay can make it a valid Award. Likewise, if the Award is otherwise valid, administrative delay by cannot remove the requirement of showing sufficient cause. The Respondent's reliance upon *Gurdev Singh* does not change the result. The principle that an order continues to operate until its invalidity is established in appropriate proceedings is different from saying that a nullity becomes valid merely because it was not challenged for some years. Here, the Applicant has approached the competent appellate Court and has raised the question of the validity of the Award. The Court has examined that question and has found the Award to be a

nullity. Once that finding is reached, the Award cannot be protected only on the ground that the Applicant approached the Court after 2958 days. There is a distinction between delay in challenging an erroneous Award and delay in bringing before the Court the question whether the Award had any legal existence. In the first case, limitation operates in its normal manner and sufficient cause is required. In the second case, the Court cannot treat passage of time as curing the fundamental defect. This does not mean that limitation has no importance whenever a party uses the word “nullity”. A party cannot avoid limitation merely by describing an erroneous judgment as void. The Court has to examine the nature of the defect. Only where the defect is found to affect the very authority of the Court and the adjudication is consequently found to be a nullity, the question of limitation has to be considered on that footing.

47. In the present case, the defect is found to be of that nature. The sole claimant had died before the Reference Court heard and decided the reference. His legal representatives were not brought on record. The Reference Court nevertheless proceeded with the matter and passed the Award in favour of the deceased claimant. The Award is not being challenged merely because the Reference Court committed an error in deciding the amount of compensation. The challenge is to the very adjudication. In the facts of the present case, such adjudication is a nullity. Once the Award is held to be a nullity, the period of 2958 days cannot be treated as making that Award valid. The Award did not become valid on the expiry of the period of limitation. The passage of time

may have consequences in case of a valid judgment, but it cannot give jurisdiction to the Court retrospectively or cure the absence of a party whose presence was necessary for a valid adjudication.

48. I hold that the Award passed by the Reference Court in favour of the deceased sole claimant is a nullity. The objection to its validity is not an objection to a mere error in the Award. It goes to the foundation of the adjudication. Therefore, the Award cannot be treated as a valid and final Award merely because it remained unchallenged for several years. Consequently, the delay of 2958 days in filing the present First Appeal cannot, in the facts of this case, be made a ground to refuse examination of the challenge to the nullity of the Award. The Applicant is not seeking to obtain a fresh opportunity to challenge an otherwise valid Award merely on merits. The Applicant is bringing before the Court the fundamental defect in the Award. The explanation given by the Applicant regarding administrative movement of the file and the Covid-19 period may not satisfactorily explain each and every day of the delay. However, that by does not change the conclusion. Once the Award is found to be a nullity, the lapse of time cannot validate it. The Applicant cannot be denied examination of the said fundamental defect merely on the ground that the challenge was filed after 2958 days.

49. I answer the question in favour of the Applicant. The delay of 2958 days deserves to be condoned, not because every delayed challenge to an illegal or erroneous Award can be entertained without explanation, but because the Award under challenge is found to be a nullity. A nullity cannot become a valid adjudication

merely by passage of time. The conclusion is that the Award passed by the Reference Court in favour of the deceased sole claimant is a nullity. The legal representatives of the sole claimant were not brought on record before the Reference Court proceeded to hear and decide the reference. The Award was consequently passed in favour of a person who was no longer alive. In these circumstances, the Award has no legal force. The delay of 2958 days cannot prevent the Applicant from bringing this nullity before the competent appellate Court. The delay is accordingly liable to be condoned, and the First Appeal is required to be considered on its merits.

50. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

- (i) Interim Application No. 11771 of 2025 is allowed.
- (ii) The delay of 2958 days in filing the First Appeal is condoned.
- (iii) Interim Application No. 11771 of 2025 stands disposed of in the above terms.

(AMIT BORKAR, J.)