

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Misc. Civil Application No.108 of 2015 (for Review)

In

Writ Petition No.5090 of 2014 (D)

(Sou. Diksha w/o Nitin Bhaisare v. Additional Commissioner, Nagpur, and
others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri S.P. Bhandarkar, Advocate for Applicant.

Shri N.S. Rao, AGP for Non-Applicant Nos.1 and 2.

Shri I.G. Meshram, Advocate for Non-Applicant No.3.

Coram : R.K. Deshpande, J.

Dated : 18th February, 2015

This Court had dismissed Writ Petition No.5090 of 2014 by an order dated 21-1-2015, which is reproduced below :

“ The petitioner has been disqualified under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act for encroachment on the government land. Both the authorities below have recorded the finding that the encroachment has been established. In the memo of appeal preferred before the Divisional Commissioner specific averment is that the petitioner has applied for regularization of the encroachment before the Competent Authorities. In view of the fact that the encroachment is not disputed no interference is called for in the order impugned. The writ petition is dismissed.”

Perusal of the aforesaid order shows that the dismissal of the petition is essentially based upon the fact that in the memo of appeal preferred before the Divisional Commissioner, there is a specific averment that the applicant/petitioner has applied for regularization of the encroachment before the Competent Authorities, and this fact has not been disputed.

Shri Bhandarkar, the learned counsel appearing for the applicant/petitioner, has invited my attention to para 2 of the memo of appeal on page 31 of the main writ petition, wherein the statement is made as under :

“2. It is further alleged that the Appellant had applied for regularization of the aforesaid encroachment before the competent authorities and in response to said application for regularization the Tahsildar, Chimur, district Chandrapur, published a public notice on 27.9.2012 calling for objections from the persons in respect of said regularization. The Respondent no.2 filed certified copies of the said public notice issued by the Tahsildar and objections raised by the concerned people.”

It is on the basis of the aforesaid statement that this Court has recorded the finding that the applicant/petitioner has applied for encroachment. It is apparent that this is not the averment of the applicant/petitioner that she has applied for regularization of the encroachment, but it is an allegation on the part of the non-applicants/respondents that the applicant/petitioner has made the encroachment. In view of this, there is an error apparent on the face of the record, which is required to be corrected.

Hence, the Misc. Civil Application for review is

allowed. The order dated 21-1-2015 passed by this Court in Writ Petition No.5090 of 2014, is hereby set aside. The writ petition to be heard finally in the next week. The interim order passed by this Court on 19-9-2014, which was operating during the pendency of the petition, shall continue to operate.

Judge.

Lanjewar