

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

CIVIL APPLICATION (CAO) NO.582 OF 2014
WITH
CIVIL APPLICATION (CAO) NO.583 OF 2014
WITH
CIVIL APPLICATION (CAO) NO.584 OF 2014
IN
WRIT PETITION NO.4510 OF 2012

AND

CIVIL APPLICATION (CAO) NO.580 OF 2014
WITH
CIVIL APPLICATION (CAO) NO.581 OF 2014
IN
MCA NO.281 OF 2013
IN
LPA NO.422 OF 2011
IN
WRIT PETITION NO.1658 OF 2011 (D)
Trilok Bothra and anr

..vs..

Chandrashekhar Giri and ors

.....
Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders
.....

Court's or Judge's order

Shri A.J. Gilda, counsel for the applicants.

**CORAM : B.P.DHARMADHIKARI &
PRASANNA B. VARALE, JJ.
DATE : JANUARY 16, 2015.**

1. Heard Shri A.J. Gilda, learned counsel for
the applicants, Shri Vishal Anand, learned counsel

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for the petitioner in Writ Petition No.4510 of 2012 or appellants in LPA No.422 of 2011, Shri A.S. Fulzele, learned Assistant Government Pleader for the Additional Commissioner, Amravati, the Sub Divisional Officer, Amravati, the Divisional Commissioner, Amravati Division, Amravati, the Collector, Amravati District, Amravati, and the Commissioner, Land Records, Pune.

None appears for Tushar Watwe legal heir of deceased Chitra Watwe and for the Municipal Commissioner, Amravati.

2. Shri Gilda, learned counsel, has produced a chart giving chronology to facilitate consideration. It is taken on record.

3. The events stated therein do not appear to be in dispute. The applicants before this Court are, two purchasers from last owner deceased Smt. Chitra.

4. The effort of the applicants in all these matters is to demonstrate that orders in Writ Petition No.4510 of 2012 were obtained on 16.1.2013 without disclosing true and correct picture to this Court or then by suppressing from it the impact which those orders would have on litigation between the parties. The petition was filed by Chandrashekhar Giri husband of a party to that litigation (viz. Pratibha) and under the guise of obtaining innocuous declaration, the entire adjudication which had attained finality right up to the Honourable Apex Court has been upset.

5. It is submitted that by pointing out order of this Court dated 16.1.2013 passed in Writ Petition No. 4510 of 2012, review was sought by Pratibha w/o Chandrashekhar Giri in LPA No.422 of 2011 and at that juncture, the applicants who were otherwise party to LPA did not have any notice. This Court under the impression that the adjudication was not being upset and the position of law contained in order dated 16.1.2013 can be used at any point of time, with an observation that such declaration may be used by the

review applicant/appellant, disposed of the LPA review.

6. The effort of Shri Gilda, learned counsel, is to demonstrate that thus the contention that the provisions of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 were not applicable which already stood negatived right upto the Honourable Apex Court was tried to be again opened by Pratibha and serious prejudice has been caused to the applicants. He has invited our attention to the Judgment of the Honourable Apex Court in the case of **Kaliinga Mining Corporation ..vs.. Union of India and ors**, reported at **(2013)5 SCC 252** particularly paragraph Nos.39 to 45. He submits by way of abundant precaution that even an erroneous finding which has reached finality operates as *res judicata*.

7. For the purposes of condonation of delay, he submits that after orders of this Court came to the

notice of the present applicants, they approached the Honourable Apex Court in SLP, which was withdrawn on 3.2.2014, when the Honourable Apex Court granted liberty to the applicants to approach High Court for seeking recall of order. Accordingly, the present proceedings have been filed.

8. Shri Vishal Anand, learned counsel, has invited our attention to the reply affidavit filed by the applicants. He submits that there is delay of about 349 days and that delay has not been explained at all. He argues that SLP was filed before the Honourable Apex Court and withdrawn. As such, liberty given by the Honourable Apex is not decisive. He further submits that in-so-far as adjudication in writ jurisdiction is concerned, the Court has only looked into legal provisions and as such there was no 'lis' between these applicants and the said petitioner. He, therefore, prays for dismissal of application for condonation of delay as also application for seeking leave to file an application for recall of order passed in writ petition.

9. The sequence of undisputed events contained in chart shows that the matter has long history. The litigation is going on since last about 16-17 years and the matter has come up to this Court at least on three occasions.

10. The moot question was whether the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 could have been applied to the transaction in dispute between the parties. It was answered against said wife – Pratibha.

11. In the background of that adjudication, her husband Chandrashekhar filed Writ Petition No.4510 of 2012. The earlier litigation or a purpose for which declaration was being obtained from this Court was not pointed out and order has been obtained. That order has been later used by Pratibha for moving an application for review in disposed of LPA. In the light of the orders in Writ Petition, this Court has passed consequential order on 30.1.2012 in review moved in LPA.

12. The facts noted above, show that the present applicants who are currently owners and the holders are affected adversely by these orders. The contention whether in law this Court could have passed such orders or not can be gone into while hearing prayer for recall, but it is obvious that such orders could not have been passed behind their back.

13. The applicants thereafter have approached the Honourable Apex Court and the Honourable Apex Court has on 3.2.2014 allowed them to withdraw SLP and granted them liberty to move this Court. Accordingly, the present proceedings are filed in period of about two months after the said order of the Honourable Apex Court.

14. In this situation, we do not see any unjustifiable delay or *mala fides*.

15. Hence, the delay is condoned.

16. Similarly, for same reasons we grant leave to the applicants to move an application seeking recall of order passed in Writ Petition No.4510 of 2012.

17. The office to register the misc. civil application in Writ Petition No.4510 of 2012 and place the same along with Misc. Civil Application No.281 of 2013 for further consideration on **30.1.2015**.

JUDGE

JUDGE

!! BRW !!

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