

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

MISC. CIVIL APPLICATION NO.472/2015
IN WRIT PETITION NO. 486/2015.

Gajanan Damodhar Shingare and another

-VERSUS-

Sub Registrar, Class-I, Karanja Ghadge and others.

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

Court's or Judge's Orders

**CORAM : B.P.DHARMADHIKARI
& P.N. DESHMUKH, JJ.**

DATE : JULY 09, 2015.

Heard Shri M.G. Bhangde, learned Senior Counsel with Shri S.V. Sohoni, learned Counsel for the applicants/petitioners, Mrs. B.H. Dangre, learned Government Pleader for respondent nos. 1 and 2 and Shri A.D. Sonak, learned Counsel for respondent no.3.

2. Perused reply – affidavit filed on behalf of respondent no.2. Respondent no.3 has not filed any separate reply in this review proceedings.

3. Effort of learned Senior Counsel appearing on behalf of the applicant is to demonstrate that a

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notification under Section 1[3] of the Maharashtra Industrial Development Act, 1961 (MID Act) cannot be construed as a notification under Section 4 of the Land Acquisition Act, 1894 (LA Act). Additionally he submits that even if it is so construed, provisions of LA Act do not bar registration of sale deed, after issuance of such notification under Section 4 of the LA Act. Lastly, by placing reliance upon affidavit of respondent no.2 filed in this review petition, particularly, paragraph no.3 thereof, he submits that the said respondent has accepted that registration of sale deeds have not been prohibited and no letter stopping the Sub-Registrar (respondent no.1) from registering such sale deeds has been issued. He has also invited our attention to the sale deeds placed on record along with Civil Application No.1973/2015, to urge that in respect of others, sale deeds have been accepted and registered by the respondent no.1.

4. Learned Government Pleader appearing on behalf of respondent nos. 1 and 2 as also learned counsel appearing for respondent no.3 point out that this Court was called upon to decide the controversy about coming into force of Chapter VI of the MID Act

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and accordingly that controversy has been looked into while deciding Writ Petition No. 486/2015 on 09.04.2015. Effort of learned Government Pleader is to point out two provisos to Section 1[3] of the MID Act to contend that after Chapter VI has come into force on 11.02.2010 vide notification dated 03.02.2010, and its extension or application can be withdrawn within a period of 35 years.

5. By placing reliance upon various judgments, effort of learned Senior Counsel and learned Government Pleader is to demonstrate that notification under Section 1[3] of the MID Act, is either equivalent to or not equivalent to Section 4 notification under Land Acquisition Act. Learned Government Pleader has submitted that after issuance of such notification under Section 1[3] of the MID Act, no notification under Section 4 of the LA Act is required to be issued.

6. In the light of the arguments advanced we have perused the judgment dated 09.04.2015. Only contention then advanced was on the language of Section 1[3] and contention was the Government had not issued any notification bringing into force Chapter

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VI thereof. A notification dated 03.02.2010 on record has been looked into by this Court in the said background a finding that it is a notification by which said Chapter has been brought into force is, recorded. In the light of this finding, the writ petition was disposed of.

7. During arguments, our attention was drawn to a Division Bench judgment reported at 2014[1] All MR 260 (Avadhut Rokdoba Shinde .vrs. State of Maharashtra and others). A sentence appearing therein in paragraph no.15 was then pressed into service. Because that statement was pressed into service, we have made observations in that respect in paragraph no.6 of the judgment.

8. During hearing, learned Senior Counsel has invited our attention to a judgment of learned Single Judge of this Court reported at 2008 (6) Mh.L.J. 659 (Mahadeo Vaidya .vrs. State of Maharashtra) and Division Bench judgment of this Court reported at 2008 (1) All MR 654 (M.I.D.C. .vrs. Shaikh Khatinabi and others) to urge that there a contrary finding has been recorded.

9. Effort of learned Senior Counsel or learned

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Government Pleader to demonstrate the status of the notification issued under Section 1[3] of the MID Act or its equivalence or otherwise vis-a-vis, Section 4 of the LA Act, was therefore, not required to be gone into when the writ petition was decided. Not only this, the later material which has been produced by the applicants/petitioners to demonstrate that in relation to adjacent lands, which also find mention in very same notification, sale deeds have been registered, was also not then produced before this Court. The stand that the respondent State Government has not issued any prohibitory order was also not there at that juncture.

10. In this situation, we find that few important aspects which have got bearing on the adjudication of the controversy could not be gone into by this Court when it decided Writ Petition No.486/2015. Hence, only to enable the parties to have full opportunity and to see that the issues involved are properly and justly decided, we recall the judgment and order dated 09.04.2015 passed in Writ Petition No.486/2015, and restore the said Writ Petition back to file. Registry to place the said Writ

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Petition for its due consideration before the appropriate bench in accordance with roster assignment. Respective Counsel waive notice after restoration.

11. Misc. Civil Application is accordingly allowed and disposed of. No costs.

JUDGE

JUDGE

Rgd.