

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Misc. Civil Application [Resto.] No. 134 of 2015
IN
Writ Petition No. 2061 of 1994 [decided]
[Bhojraj Bhayyalalji Gupta & another Vs. State of Mah. & three others]

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

Court's or Judge's orders

Mr. A. J. Gilda, Adv., for the Applicants.
 Mr. V.A. Thakre, AGP for respondent nos. 1 to 3.
 Mr. J.B. Kasat, Adv., for respondent no.4.

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**CORAM : B. P. DHARMADHIKARI
AND
A.S. CHANDURKAR, JJ.**

DATE : 27th September, 2016

Heard learned Adv. Mr. Gilda for the Applicants,
 learned AGP Mr. V.A. Thakre for for respondent nos. 1,2
 and 3, and learned Adv. Mr. J.B. Kasat, for respondent
 no.4. Nobody appears for the original petitioners.

The Applicants in this Civil Application claim to be
 purchasers from original petitioners. By pointing out
 recitals in the sale-deed as also provisions of Order-XXII,
 Rule 10, Civil Procedure Code, counsel for the applicants
 submits that a right to prosecute civil suit or other
 litigation is expressly assigned to these applicants. He

states that Writ Petition No. 2061 of 1994 filed by the original petitioners [Guptas] was dismissed in default and restored on 8th January, 2013 because of application moved by one Kishor Mantri. After restoration of Writ Petition, as original petitioners had disposed of the property in favour of present applicants, they did not appear and Shri Mantri, who got the petition restored, also did not pay any attention. Hence Writ Petition No. 2061 of 1994 was again dismissed on 16th July, 2013.

Learned Adv. Mr. Gilda submits that in Writ Petition No. 2061 of 1994, a declaration of lapsing of reservation under Section 127 (1) of the Maharashtra Regional & Town Planning Act, 1965 was sought and as the present applicants have stepped into the shoes of original owners, they are entitled to such declaration.

Learned AGP appearing for respondent nos. 1 to 3 disputes the legal propositions of Adv. Mr. Gilda.

Learned Adv. Mr. Kasat submits that acquisition of interest by present applicants is not during pendency of Writ Petition. As such they have got no right to prosecute it. He further adds that after Writ Petition No. 2061 of 1994 was restored on 8th January, 2013, present applicants ought to have taken steps to prosecute it effectively and should have joined Shri Mantri as respondent. Shri Mantri was never joined as

party thereto. Therefore, he submits that dismissal of Writ Petition puts an end to entire controversy and by opening the Writ Petition again, the disputes, which are finally settled, are being re-opened.

We keep all contentions of Adv. Mr. Kasat about re-opening of disputes finally settled open for consideration on merits of the Writ Petition. It is apparent that present applicants have purchased immovable property which formed subject-matter of Writ Petition No. 2061 of 1994 from original petitioners and because of stipulations in the sale-deed in their favour, they are entitled to contest that petition.

We, therefore, do not see any mala fides in the matter.

As such, keeping objections of learned AGP, as also learned Adv. Mr. Kasat on merits open, we recall the order dated 16th July, 2013 and restore Writ Petition No. 2061 of 1994 for its final hearing.

Respective counsel waive notice of restoration.

List the Writ Petition for final hearing after four weeks.

Judge

Judge

C E R T I F I C A T E

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by : R.B. Hedau,
Pvt. Secretary.

Uploaded on : 28th Sept., 2016