

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

MISC. CIVIL APPLN. ST. NO. 20452 OF 2016

IN

WRIT PETITION NO. 5901 OF 2014 (D)

Pioneer Green Valley Resident Association, through its Secretary and others

-vs-

The Nagpur Municipal Corporation, thr. Commissioner and others

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

Court's or Judge's Orders.

Mr. S.A.Chaudhari, counsel for the applicants/petitioners.

CORAM : SMT. VASANTI A NAIK &
KUM. INDIRA JAIN, JJ.

DATE : 06.10.2016.

By this miscellaneous civil application, the applicants/petitioners seek a review of the order, dated 22/04/2016 in Writ Petition No.5901 of 2014.

By the writ petition, the applicants/petitioners had sought a direction against the respondents to shift the cremation ground from the part of Khasra No.90 of Mouza Hazari Pahad to any other place reserved for the crematorium in the development plan in the City of Nagpur. By amending the writ petition, certain other directions were also sought. We had, by our order, dated 22/04/2016, dismissed the writ petition after recording reasons for rejecting the submissions made on behalf of the petitioners and after observing that, no case was made out by the petitioners for granting the relief. Since the review application is filed by making a reference to the order of the Hon'ble Supreme Court, dated 22/08/2016, though we may have normally dismissed this review application with a short order, we are inclined to make some observations.

In Writ Petition No.5901 of 2014, a couple of points were argued by the counsel for the petitioners. It is necessary to mention that at the relevant time, the case was argued by Mr.Abhijeet

Sambaray, Advocate. It was canvassed before this court that the cremation ground was causing nuisance to the petitioners. It was also argued that the issuance of notification was not in accordance with the procedure. It was argued that though a statement was made by the Corporation in Writ Petition No.4481 of 2006 that they would change the site of crematorium, the site was not substantially changed and the cremation ground was merely shifted from one side of the nullah to the other side of the nullah. All the points argued on behalf of the petitioners were mentioned in our order, dated 22/04/2016, that was rendered in the open Court in the presence of the counsel for each of the parties to the petition. The counsel for the petitioners, who then argued the matter was present when the order was rendered and he did not mention either after completion of rendering of the order on 22/04/2016 or even thereafter by filing an application in this Court that an additional point was urged, but the same does not find place in the order, dated 22/04/2016 and is not dealt with. Despite the fact that the point in respect of want of notice under Section 37 of the Maharashtra Regional and Town Planning Act in the matter of modification of the final development plan was not urged in this Court, on 22/04/2016, a statement was made by the learned counsel before the Hon'ble Supreme Court (must be on the instructions of either the petitioners or the local counsel) that though the point in respect of want of notice under Section 37 of the Act was urged before this Court, this Court has not dealt with the same.

We are afraid that the statement made by the learned counsel for the petitioners before the Hon'ble Supreme Court is factually incorrect. No submission was made before us by the counsel for the petitioners, on 22/04/2016 in respect of want of notice under Section 37 of the Maharashtra Regional and Town Planning Act. Had such a submission been made, since the order was dictated in the open Court, the counsel for the petitioners could have immediately informed the Court that one more point in regard to the absence of notice, though urged, was not incorporated in the order and was not dealt with. However, this was not done, as the petitioners' counsel had not

urged the point of which a mention was made before the Hon'ble Supreme Court when the matter came up before the Hon'ble Supreme Court, on 22/08/2016. As per the settled position of law, if a statement is made before a particular Court or Forum and the submission does not find place in the judgment/order, that may or may not be rendered in the open Court, it would be necessary for the parties to move the same Court or Forum before which the submission was made and make a grievance about the non inclusion of the submission in the judgment/order. It would be worthwhile to refer to paragraph No.61 of the judgment of the Hon'ble Supreme Court, reported in (2003) 2 SCC 111 (Bhavnagar University v. Palitana Sugar Mill (P) Ltd.and others), in this regard. Since the submission, as the one made by the learned counsel for the petitioners before the Hon'ble Supreme Court, was not made before this Court, the counsel for the petitioners did not make a grievance before this Court either at the time of rendering of the order in the open Court, on 22/04/2016 or even thereafter by moving an appropriate application that an important and relevant submission, that was made by the counsel before this Court, was not incorporated in the order and was not considered by the Court.

This is not the first case of the nature like the one in hand. We are now regularly coming across such cases wherein a reference is made to the order of the Hon'ble Supreme Court before which the statement is made by the counsel for the petitioners that a relevant submission, though was made before the High Court, is not considered or dealt with. If such a statement is factually correct, we would be glad to redress the grievance of the concerned party, if made before us, at the time of rendering the judgment or the order or within a short time thereafter by moving an appropriate application. We, however, find that the well accepted procedure that needs to be followed as per the judgments of the Hon'ble Supreme Court is not being followed and a statement is casually made before the Hon'ble Supreme Court by the consent of the parties approaching the Hon'ble Supreme Court, may be at the behest of the petitioners themselves or their local counsel that a particular submission, that was made before the High Court is not

incorporated in the order. In this case, the original petition was argued by Advocate Mr. Abhijeet Sambaray. Before the Hon'ble Supreme Court, the learned counsel for the petitioners had made a statement that a point, though urged before this Court, was not considered. Now the petitioners have engaged another counsel in this review application. It would, therefore, not be proper for a counsel, who is engaged only for arguing this review application to contend that a point was argued in this Court by a counsel, who earlier appeared in the matter on behalf of the petitioners. We do not appreciate the conduct of the parties of making an incorrect statement before the Superior Court, as the Superior Court would not be in a position to gauge the correctness or otherwise of the statement. It is well settled that even if several grounds are raised in the petition and if some of them are not argued, they are deemed to have been given up. It would be necessary to refer to the judgment of the Hon'ble Supreme Court, reported in (2008) 2 SCC 95 (Mohd. Akram Ansari v. Chief Election Officer & others WITH Naved Yar Khan v. Haroon Yusuf & Another), in this regard.

We reiterate that the counsel for the petitioners, who argued the matter before this Court, on 22/04/2016, had not urged the point in respect of want of notice under Section 37 of the Maharashtra Regional and Town Planning Act in the matter of modification of the final development plan. It is also worth mentioning that though before the Hon'ble Supreme Court, it was stated by the counsel for the petitioners that they had duly urged the point in respect of want of notice under Section 37 of the Maharashtra Regional and Town Planning Act before this Court, on 22/04/2016 and the same was not considered, while arguing the review application, the learned counsel for the applicants had sought to submit that the State Government had not followed the procedure as required by the provisions of Section 37 (2) of the Act. We find that what was stated before the Hon'ble Supreme Court is not sought to be urged in this Court, today. Today, the review is sought by making a reference to the provisions of Sections 37(2) and 137 of the Act though it was argued before the Hon'ble

Supreme Court that a point in respect of want of notice under Section 37 of the Act in the matter of modification of the final development plan was urged before this Court and not dealt with. After seeking liberty of the Hon'ble Supreme Court, on 22/08/2016 to canvass the point that finds place in the order of the Hon'ble Supreme Court, dated 22/08/2016 in this Court, it is unfortunate that the point is not urged in this Court, today.

In the aforesaid set of facts, we dismiss the review application with costs.

JUDGE

JUDGE

KHUNTE

C E R T I F I C A T E

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

Uploaded by : G.S.Khunte,
P.A.to Hon'ble Judge

Uploaded on : 10/10/2016