

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

**CIVIL APPLICATION NO.9015 OF 2016
IN
WRIT PETITION NO.1578 OF 2002**

Shyamlal S/o Lachhiram Bajaj,
Age 72 years, Occ.Business,
R/o Plot No.36, Survey No.84,
Opp. S.T.Bus Stand, Jalna-
Ambad Road, Tq. Ambad,
Dist.Jalna. ...Applicant.

Versus

1. Kedarnath S/o Dwarkadas
Mantri, Age 52 years,
Occ.Agriculture, R/o
Rajendra Smruti,
Opp.S.T.Bus Stand , Ambad,
Dist.Jalna.

2. Municipal Council,
Ambad, through its
Chief Officer, District
Jalna.

3. The Town Planning Officer,
Collectorate Office,
Jalna, Dist.Jalna. ... Respondents.

...
Mr.R.R.Mantri, advocate for the applicant.
Mr.S.W.Munde, A.G.P. for the State.
Mr.S.S.Bora, advocate for Respondent No.1.
Mr.Swapnil Patunkar, advocate holding for
J.P.Legal Associates for Respondent No.2.

...

**CORAM : S.V.GANGAPURWALA AND
NITIN W.SAMBRE, JJ.**

**Reserved on : 29.09.2017.
Pronounced on: 24.11.2017.**

PER COURT :

1. The present application is filed for recall of the order dated 6.3.2014, passed by this Court in Writ Petition No.1578/2002, with further directions that the same may be heard on its own merits along with Writ Petition No.1656/2003.

2. The present non-applicant No.1 has filed Writ Petition No.1578/2002, thereby challenging the notice dated 12.4.2002, purportedly issued U/s 51 of the Maharashtra Regional Town Planning Act, 1966. In the said Writ Petition the present applicant is not a party.

3. The present applicant has filed Writ Petition bearing No.1656/2003, thereby seeking directions against Respondent Nos.2 to 7 in the said Writ Petition to implement the order dated

6.3.1986 with further relief that the regularisation of lease deed of Respondent No.8 as an occupant over CTS No.65-A/2 made by Respondent Nos.1 to 4 therein under order dated 30.12.1997 be cancelled and Respondent Nos.2 to 7 should not record the name of Respondent Nos.8 and 9 in the revenue land records. So also further injunction was sought against Respondent Nos.8 and 9 from carrying out any development activity over CTS Nos.65-A/1, 65-A/2 and 65-A/3 on S.No.95/2 situated at Mouje Ambad. The Respondent NO.8 in the Writ Petition No.1656/2003 is the petitioner in Writ Petition No.1578/2002.

4. It is the grievance of the present applicant that Writ Petition No.1656/2003 was required to be heard along with Writ Petition No.1578/2002, instead Writ Petition No.1578/2002 was independently decided dehors Writ Petition No.1656/2003.

5. Mr.Mantri, learned counsel submits that in Writ Petition No.1578/2002, the present applicant was not a party, as such was not aware

of Writ Petition No.1578/2002 being listed for hearing. However, the petitioner in Writ Petition No.1578/2002 was party in Writ Petition filed by the present applicant bearing Writ Petition No.1656/2003 and was aware of the order passed by this Court about both the Writ Petitions to be heard together. The petitioner in Writ Petition No.1578/2002 ought to have brought this fact to the notice of the Court, instead went ahead by arguing Writ Petition No.1578/2002 and getting it allowed. All the parties therein were hand in glove with each other in negating the right of the present applicant. The order dated 6.3.2014 in Writ Petition No.1578/2002, adversely affects the rights of the present applicant.

6. Per contra, Mr.Bora, learned counsel for the Writ Petitioner in Writ Petition No.1578/2002 and the other counsel for the respective Respondents therein submit that the petitioner is unconcerned with the dispute in Writ Petition No.1578/2002. In fact, the prayers in Writ Petition No.1656/2003 do not survive.

The applicant does not have any legal right in the writ property of Writ Petition No.1578/2002. The predecessor-in-title of the present applicant has already compromised the matter with the parties in Writ Petition No.1578/2002. The applicant does not have any semblance of right nor the applicant is prejudiced by any order passed in Writ Petition No.1578/2002.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. This Court had admitted Writ Petition No.1578/2002 under order dated 24.10.2002. In the said Writ Petition, the present applicant is not a party.

9. The Writ Petition filed by the present applicant bearing Writ Petition No.1656/2003, is admitted by this Court under order dated 25.9.2008. This Court while admitting the Writ Petition No.1656/2003 under order dated 25.9.2008 further observed that this petition to be heard

along with Writ Petition No.1578/2002. Prior to the order of Rule being passed on 25.9.2008, this Court had earlier issued notice before admission under order dated 24.4.2003. While passing the order "*Notice before admission, returnable in eight weeks*", it was further ordered that record of Writ Petition No.1578/2002 be kept along with the said Petition.

10. The Writ Petitioner in Writ Petition No.1578/2002 is party Respondent in Writ Petition No.1656/2003 in which order is passed to hear Writ Petition No.1656/2003 along with Writ Petition No.1578/2002.

11. It appears that when Writ Petition No.1578/2002 was placed for hearing, the office did not place Writ Petition No.1656/2003 for hearing along with Writ Petition No.1578/2002.

12. In fact, the office ought to have listed Writ Petition No.1656/2003 along with Writ Petition No.1578/2002, in view of the judicial order of this Court dated 25.9.2008 which

directed Writ Petition No.1656/2003 to be heard along with Writ Petition No.1578/2002. The lapse appears to be on the part of the office of this Court in placing Writ Petition No.1656/2003 along with Writ Petition No.1578/2002.

13. In view of the judicial order passed by this Court while admitting Writ Petition No.1656/2003 to hear Writ Petition 1656/2003 along with Writ Petition No.1578/2002, the judicial propriety commands both the matters ought to be heard and decided together, more particularly, when the Writ Petitioner in Writ Petition No.1578/2002 was a party Respondent in Writ Petition No.1656/2003.

14. In light of the above, only on the basis of the principle of judicial propriety and without entering into the merits of the contentions of the parties, we deem it appropriate to recall the order dated 6.3.2014 passed in Writ Petition No.1578/2002. The order dated 6.3.2014 in Writ Petition No.1578/2002 is recalled and Writ Petition No.1578/2002 is

restored to its original position and to be heard along with Writ Petition No.1656/2003.

15. The Civil Application is accordingly allowed in above terms. No costs.

16. The learned counsel for the non-applicant seeks stay to the operation of the present order for a period of eight (8) weeks.

17. Considering the fact that by virtue of the present order the order passed in the Writ Petition is recalled. The operation of the present order is stayed for a period of six (6) weeks.

(NITIN W.SAMBRE, J.)

(S.V.GANGAPURWALA, J.)

