

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

**929 REVIEW APPLICATION (CIVIL) NO. 163 OF 2018
IN WP/2992/2014**

AMBARWADIKAR INFRASTRUCTURE LIMITED THROUGH ITS
DIRECTOR

VITHALRAO RANGNATHRAO AMBARWADIKAR ..APPLICANT

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. R. R. Mantri h/f Mr. Balaji S. Shinde, Advocate
for the Applicant.

Mr. A. V. Deshmukh, AGP for Respondent-State.

Mr. A. S. Deshpande, Advocate for the Respondent
No.3.

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**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATED : 12th OCTOBER, 2018.

PER COURT:-

1. The applicant seeks review of the order dated 02.03.2016 passed in Writ Petition No.2992 of 2014.

2. Mr. Mantri, learned counsel for the applicant submits that the present applicant had applied for non-agricultural permission under application dated 11.7.2012. As per Section 44(3) of the Maharashtra Land Revenue Code by fiction of law the non-agricultural permission is deemed to be granted, if decision is not taken within a period

of 90 days from the date of application. The respondent did not take any decision within a prescribed period of 90 days, as such the applicant needs to be granted the non-agricultural permission by deeming fiction.

3. The learned counsel submits that while passing the order under review, this Court only considered that the land is reserved for the purpose of hill top forest in non development zone. The said land was reserved for hill top forest Eight (08) months after the application was given by the petitioner for non-agricultural permission. This aspect is not considered by the Court while deciding the writ petition. The impugned order under review and the writ petition filed by the petitioner for grant of non-agricultural permission be allowed.

4. Mr. Deshpande, learned counsel submits that the writ land was already under the fringe area. The application of the petitioner was not complete in all respects, as is required under Section 44, 46 of Maharashtra Land Revenue Code. The no objection from the respondents and other five authorities were directed to be brought. The petitioner failed to submit the documents as was enlisted in the letter of the respondent. The petitioner did not comply with all the requirements. As the petitioner did not comply the requirements, the petitioner would not be entitled

to take the benefit of the deeming provision. According to the learned counsel, the petitioner did not approach the added respondent no.3 at any point of time after 18.7.2012 and nor complied the requirements as contemplated. The petitioner has not discharged the responsibilities in terms of communication of respondent no.2 dated 18.7.2012. No proposal for sanction of layout is submitted.

5. According to the petitioner, the petitioner is not seeking any sanction of layout, but only seeking non-agricultural permission.

6. The learned A.G.P. adopts the argument of Mr. Deshpande, learned counsel for respondents.

7. While disposing of the writ petition, this Court had only considered that the land is reserved for the purpose of hill top forest in no development zone and as such permission for non-agricultural use of land could never have been granted.

8. It appears that the land was reserved for hill top forest about Eight (08) months after the application for N.A. was given, but these dates were not considered. Apart from the above we had not considered any of the aspect while disposing of the writ petition.

9. Considering the aforesaid, the order dated

02.03.2016 passed in Writ Petition No.2992 of 2014 is reviewed and recalled. Writ Petition No.2992 of 2014 is restored to its original position.

10. Review Application accordingly is allowed in the above terms.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/October-18

Devendra
Nandkumar
Kale

Digitally signed
by Devendra
Nandkumar Kale
Date:
2018.10.16
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