

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2706 OF 2016
IN
WRIT PETITION NO. 3264 OF 2009**

Ramkrishna V. Khot & Ors.	...Applicants
<u>In the matter between :</u>	
Ramkrishna V. Khot & Ors.	...Petitioners
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. N. V. Walawalkar – Senior Advocate with Mr. S. M. Sabrad for Applicants / Petitioners.
Mr. N. C. Walimbe – AGP for Respondent Nos. 1 to 4.
Ms Rutu Pawar i/b. Mr. S. A. Sawant for Respondent No. 7.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.
DATE : 02 JULY 2018**

P.C. :

1] Heard Mr. N. V. Walawalkar with Mr. S. M. Sabrad, the learned counsel for the applicants / petitioners, Mr. N. C. Walimibe – AGP for State – respondent nos. 1 to 4 and Ms Rutu Pawar i/b. Mr. S. A. Sawant for respondent no. 7.

2] This is an application for recall of order dated 1st August 2016, by which writ petition no. 3264 of 2009 came to be disposed of. The order dated 1st August 2016, reads as

follows :

"It appears that the interim order which was passed initially, was vacated by the Court. The grievance of the Petition is regarding excavation of the sand on the river bed. Since the interim order was vacated and the Collector was directed to scrutinize fresh bids received by him as per the policy of the State Government and finalize the bids, practically nothing remains. However, even if any grievance survives, liberty is granted to the Petitioner to file a fresh petition. Writ petition is accordingly disposed of in the aforesaid terms."

3] The aforesaid order proceeds on the basis that the interim order which was initially made by this Court had already been vacated. Mr. N. C. Walawalkar, the learned Senior Advocate for the applicants submits that as on 1st August 2016, the interim order made by this Court in relation to the sites which were the subject matter of the petition, was very much in operation. He submits that on 1st August 2016, the junior Advocate, who appeared before this Court, was really unaware of this position and the Advocate on record as well as the Senior Advocate engaged to appear in this matter, were unavailable. Mr. Walawalkar has taken us through the various orders made in this matter from time to time, to demonstrate that the interim order in so far as the sites which were the subject matter of the writ petition, was very much in operation. From the record now brought

to our notice, it does appear that the interim order was in operation and therefore, the petition, could not have been disposed of, on the basis that the interim order stood vacated and the reliefs applied for in the main petition were rendered infructuous.

4] The interim order was first made on 31st August 2009, by which, the State Government was directed not to auction any of the sites in Karli river until further orders from this Court. This order was continued on 7th October 2009. On 15th December 2009, the blanket interim order granted and continued by the orders dated 31st August 2009 and 7th October 2009 was varied to some extent. However, from the perusal of the order dated 15th December 2009, it is quite clear that the Collector was permitted to go ahead with the process of auctioning sites '*other than the site which is subject matter of this petition.*' The order dated 15th December 2009, reads as follows :

*"1] Heard learned counsel appearing for the Government and the learned counsel appearing for applicants. The learned counsel appearing for original petitioners is not present. As and by way of ad-interim order, the Collector is permitted to go ahead with the process of auctioning the sites **other than the site***

which is subject matter of this petition. However, the bids may not be confirmed without seeking leave of the Court. Place the civil applications before the Court on 4th January 2010.

Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary of this Court.

Certified copy expedited."

[Emphasis supplied]

5] Thereafter, in the order dated 26th February, 2010, the grievance of the learned counsel for the petitioners that the auction notice dated 13th January 2010 issued by the Collector had included the sites which was the subject matter of the present petition at survey nos. 435, 436 and 437 was noted. In the further order made on 26th February 2010 itself in relation to civil application (stamp) no. 3522 of 2010, this court at paragraph 4 noted the statement of the learned AGP '*that so far as sites of the Petitioners are concerned, even if they are mentioned in the auction notice dated 13th January, 2010 they will not be auctioned at this stage.*'

6] From the aforesaid, it is quite apparent that on 1st August 2016 when the matter was taken up, the interim

order, in so far as the sites which were the subject matter of this petition was very much in operation. The explanation furnished in the civil application that the Advocate who appeared for the petitioner on the said date, was not aware of these facts and therefore, could not bring these facts to the notice of this Court, deserves acceptance.

7] Even when this application was taken out, this Court required the AAGP to take instructions as to whether any auction has already been held in respect of the sites which form the subject matter of this petition. On 9th February 2018, the learned AAGP, reported that no such auction has been held as on date but applied for some time to place this fact on affidavit. This Court, which had already ordered *status quo* on 29th January 2018 directed such *status quo* to continue to operate. Even now, the learned AGP confirms that the sites which are subject matter of this petition have not yet been auctioned.

8] Taking into consideration all the aforesaid facts and circumstances, we recall our order dated 1st August 2016. As a consequence, we restore writ petition no. 3264 of 2009

to the file of this Court. Further, in order to avoid any ambiguity, we make it clear that with the restoration of this petition, the interim order to the effect that the sites which are the subject matter of the present petition will not be auctioned is also revived and shall continue to operate until further orders.

9] Civil application is disposed of in the aforesaid terms.

10] We direct the Registry to place writ petition no. 3264 of 2009 before the appropriate bench for directions.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA