

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

M.C.A. NO.466/2018 IN WRIT PETITION NO.1212/2018 [D]

[Bajaj Construction and one .vs. The Municipal Corporation, Amravati and others]

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

Court's or Judge's orders

Shri M.G. Bhangde, Senior Counsel with Shri R.M. Bhangde, counsel for the applicants-
petitioners,
Shri J.B. Kasat, counsel for the respondents-corporation.

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CORAM : SMT. VASANTI A NAIK AND

MRS. SWAPNA JOSHI, JJ.

DATED : APRIL 24, 2018.

Heard.

By this miscellaneous civil application, the applicants-petitioners seek the recall of the order dated 28.2.2018 by which the petitioners were permitted to withdraw the writ petition on request as they were willing to avail the alternate remedy under section 406 of the Maharashtra Municipal Corporations Act.

Shri Bhangde, the learned Senior Counsel appearing for the applicants-petitioners states that the learned counsel for the applicants (petitioners in Writ Petition No.1212/2018) who was working out the matter for admission on 28.2.2018 was not aware about the orders passed by this court and though the learned counsel for the respondents-corporation was aware about the said orders and decisions. The same were not pointed out to this court, as a result of which, the learned counsel for the petitioners has sought permission to withdraw the writ petition. The learned senior counsel has relied on the judgment of the Hon'ble Supreme Court reported in (2006) 3 SCC 699 (Jet Plywood (P) Ltd. and others .vs. Madhukar Nowlakha and others) in support of his submission.

Shri Kasat, the learned counsel for the respondent-corporation strongly opposes the prayer made in this miscellaneous civil application. It is stated that the petitioners had taken a conscious decision of availing the alternate remedy

under section 406 of the Maharashtra Municipal Corporations Act and the withdrawal of the writ petition was sought in the said background. It is submitted that the submission made by the learned senior counsel for the applicants that the corporation was aware of the judgments of this court but they were not pointed out to the court would not be correct as the said judgment are rendered in different set of facts and in this case the ratable value was calculated on the basis of the lease agreements in respect of the neighbouring properties.

We are not inclined to grant the prayer made by the applicants in this miscellaneous civil application. If the petitioners were willing to avail the alternate remedy and they had sought the permission to withdraw the writ petition on the said basis, there cannot be a recall of the order. We are inclined to accept the submission made on behalf of the respondent-corporation that a conscious decision was taken by the applicants-petitioners of withdrawal of the writ petition with a view to avail the alternate remedy. If the prayer made by the applicants is granted, it would not be possible for this court to deny similar prayers to other parties in future. The judgment reported in (2006) 3 SCC 699 (supra) and relied on by the learned counsel for the applicants cannot be applied to the facts of this case as in the facts of that case the petitioner had withdrawn the suit on the basis of the misrepresentation/subterfuge by the defendants. In the said case the withdrawal of the suit was by the mistake occasioned by the misrepresentation by the defendants that they would sell the suit property to the plaintiff if they withdraw the suit. Such is not the case here.

Hence, we reject the prayer made in the miscellaneous civil application. The miscellaneous civil application stands disposed of accordingly.

JUDGE

JUDGE