

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

C.A.O. NO.986/2017

AND

C.A.O. NO. 985/2017

AND

CIVIL APPLICATION (CAO) NO.224/2015

AND

M.C.A. STAMP NO.21994/2014

IN

SECOND APPEAL NO.147/1999

Sau. Parwatidewi W/o Girdharilal Bajaj and another

..Vs..

Krushnarao Gangaramji Panchgaonkar through L.Rs. 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 R.L. Khapre, Advocate with Shri V.S. Giramkar, Adv for applicants.
Shri Vinay Dahat, Adv. h/f Shri J.B. Kasat, Adv for resp Nos.1(a) to 1(d).

CORAM : Z.A. HAQ, J.

DATED : 11.6.2019.

C.A.O. NO.986/2017

1. The learned Advocate appearing for the applicants states that this application is filed as an abundant precaution seeking condonation of delay in filing C.A.O. No.985/2017. It is pointed out that C.A.O. No.985/2017 is filed with the prayer that order passed by the learned Registrar (J.) on 14th July, 2016 dismissing the review application against non-applicant Nos.2(a) and 2(b) as they could not be served, be quashed and set aside. It is submitted that C.A.O. No.985/2017 is filed under Section 151 of the Code of Civil Procedure as the provisions of Order 9 Rule 9 of the Code of Civil Procedure are not applicable to review

application i.e. M.C.A. Stamp No.21994/2014.

Be that as it may, even otherwise, the explanation given in the C.A.O. No.986/2017 for delay is acceptable. Hence, the civil application is **allowed**.

C.A.O. NO.985/2017

2. Accepting the explanation given in the application, order passed by the learned Registrar (J.) on 14th July, 2016 is set aside and review application against non-applicant Nos.2(a) and 2(b) is restored. The civil application is **allowed** accordingly.

CIVIL APPLICATION (CAO) NO.224/2015

3. Accepting the explanation given in the application, delay of 7 days in filing the M.C.A. Stamp No.21994/2014 (review application) is condoned. The civil application is **allowed** accordingly.

M.C.A. STAMP NO.21994/2014

4. Heard.

This application is filed by the original defendant Nos.1 and 2 seeking review of the judgment passed by this Court in Second Appeal No.147/1999. Defendants contend that the directions given by this Court in paragraph No.16 of the judgment are required to be recalled as the directions are given exceeding the jurisdiction under Section 100 of the Code of Civil Procedure and beyond the subject matter and scope of second appeal which is decided by this Court. It is

argued that because of the directions given by this Court in paragraph No.16 of the judgment, the right of the defendants to seek regularization of the plots as per the policy of the government is taken away and the Collector, Amravati, which is the competent Authority in the matter, will not be able to take any decision regarding regularization of the plots. Learned Advocate for the applicants (original defendants) has fairly submitted that the defendants are not seeking regularization of the plots in those proceedings and the defendants intend to pursue the proceedings before the Collector, Amravati and if the defendants succeed in pointing out that there is no breach of any of the condition imposed or the breach is condonable, and the Collector Amravati can regularize the breach, the defendants would abide by the directions of the Collector, Amravati in the matter.

Learned Advocate appearing for the non-applicants / original plaintiffs has opposed the application on the ground that review jurisdiction is not required to be exercised in the facts of the case.

Considering the nature of controversy, I find that the directions given by this Court in paragraph No.16 of the judgment are causing undue hardship to the defendants. Learned Advocate for the defendants is right in contending that the directions given by this Court in paragraph No.16 of the judgment needs to be recalled or kept in abeyance to enable the defendants to pursue proceedings before the Collector, Amravati for regularization of the plots.

Hence, the following order:

The directions given by this Court in paragraph No.16 of the judgment delivered in Second Appeal No.147/1999 are kept in abeyance for six months to enable the defendants to pursue proceedings before the Collector, Amravati for regularization of the plots in question.

It is submitted that the defendants have already filed the proceedings before the Collector, Amravati. The Collector, Amravati shall dispose the proceedings till 30th September, 2019 without being influenced by the judgment delivered in Second Appeal No.147/1999.

If the Collector, Amravati accepts the claim of the defendants regarding regularization of the plots in question, paragraph No.16 of the judgment delivered in Second Appeal No.147/1999 shall not be given effect to. However, if the Collector, Amravati rejects the claim of the defendants for regularization of the plots in question, the Collector, Amravati shall take action as per the directions given in paragraph No.16 of the judgment delivered in Second Appeal No.147/1999. The review application is **allowed** in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE