

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**CAO NO. 01/2018
AND
M.C.A. (ST.) NO. 18919/2017
IN
WRIT PETITION NO. 4195/2009 (D)**

- 1] Bhagchand Kimmatram Adwani,
Aged about 47 years, Occ. Business,
R/o. Ram Nagar, Chandrapur, Tah.
And Dist. Chandrapur
- 2] Roshan Dariyanamal Hasani,
Aged 35 years, Occ. Business,
R/o. Ram Nagar, Chandrapur,
Tah. & Dist. Chandrapur
- 3] Harsha W/o Bharat Raja,
Aged 42 years, Occ. Business,
R/o. Bazar Ward, Chandrapur,
Dist. Chandrapur
- 4] Sushila W/o Amarsingh Rathod,
Aged about 34 years, Occ. Business,
R/o. Shivaji Nagar, Mul Road,
Chandrapur, Dist. Chandrapur

.... **PETITIONER(S)**

// VERSUS //

Municipal Counsel, Chandrapur,
Through its Chief Officer

.... **RESPONDENT**

Shri N.D. Khamborkar, Advocate for the petitioner(s)
Shri M. I. Dhatrak, Advocate for the respondent

CORAM : Z.A.HAQ, J.
DATED : 02/08/2019

Though the explanation given in the applications is not satisfactory, considering the fact that the writ petition was admitted and was dismissed in default at the stage of final hearing, and as the learned advocates for the respective parties have shown willingness to argue the matter, the delay of 95 days in filing the MCA is condoned, the order passed by this Court on 26/04/2017 dismissing the writ petition for want of prosecution is recalled and the writ petition is restored.

The CA and MCA are **allowed** accordingly. No costs.

WRIT PETITION NO. 4195/2009

ORAL JUDGMENT :

- 1] Taken up for hearing.
- 2] Heard Shri N.D. Khamborkar, Advocate for the petitioners and Shri M.I. Dhattrak, Advocate for the respondent.
- 3] The learned advocate for the petitioners has pointed out that the interim order directing the parties to maintain status-quo was operating in the petition since 20/11/2009 till 26/04/2017 and has prayed that the same be continued till disposal of the civil suit. It is pointed out that demolition of some portion of the construction undertaken by the petitioners

is threatened by the respondent, and therefore continuation of the order directing the parties to maintain status-quo is necessary till the decision of the civil suit.

4] Though the prayer made on behalf of the petitioners, prima facie appears to be justified, on examining the observations made by the learned District Judge as pointed out by the advocate for the respondent, I am not inclined to continue the interim order. In para no. 13 of the judgment, the learned District Judge has recorded that the petitioners have utilized FSI more than 3.3 instead of 2.0. It is further recorded in para no. 15 of the judgment that the petitioners have not approached the Court with clean hands and have suppressed material facts. It is recorded that earlier also, notice under Section 53 (1) of the Maharashtra Regional and Town Planning Act was issued to the petitioners on 30/09/2004 and the petitioners had submitted the revised plans on 16/09/2005 and 31/12/2005 and while pointing out the facts while seeking temporary injunction in the proceedings, the petitioners referred only to notice dated 19/06/2008.

5] After going through the material placed on record, I find that the order passed by the learned trial Judge and the judgment passed by the learned District Judge are based on proper appreciation of the facts on record and do not require any interference by this Court in the extraordinary jurisdiction.

6] Hence, the writ petition is **dismissed** with costs quantified at Rs. 20,000/- to be paid by the petitioners to the respondent.

The petitioners shall deposit the amount of costs before the trial Court within one month failing which the trial Court shall pass appropriate orders against the petitioners, considering it to be non-compliance of the order passed by this Court.

On deposit of the amount of costs, the amount be given to the respondent – Municipal Council.

JUDGE

Ansari