

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.11173 OF 2022
IN RA/90/2021

ASHA SUNIL ZAWAR

..APPLICANT

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Mukul Kulkarni h/f Mr. A. R. Syed, Advocate for the Applicant.

Mr. S. G. Sangle, AGP for Respondents-State.

Mr. V. B. Patil, Advocate for Respondent Nos.2 and 3.

...

CORAM : RAVINDRA V. GHUGE

AND

S. G. MEHARE, JJ.

DATED : 29th JULY, 2022.

PER COURT:-

1. The Review Application No.90/2021 stood dismissed in default on account of non removal of office objections, despite several opportunities having been granted.

2. Nevertheless, for the reasons set out in the application and upon considering the submissions of the parties, the Civil Application is allowed. Delay of 33 days is condoned. The Review Application No.90/2021 stands restored at the stage at which it was dismissed.

3. By consent of the parties, we have considered the Review Application and more specifically in the light of the view taken by the learned Full Bench of this Court in **Shree Vinayak Builders and Developers Vs. The State of Maharashtra and Others** delivered on 25.07.2022 at Aurangabad.

4. Having perused the above judgment, we find that the learned Full Bench has referred to the judgment delivered on 16.09.2021 in **Asha Sunil Zawar Vs. The State of Maharashtra and Others**, in paragraph no.42 as under:

“42. In the case of Asha Sunil Zawar (supra) the Division Bench at Aurangabad has taken a view that offering compensation of TDR within 24 months from the date of receipt of purchase notice is the step to commence the acquisition of the reserved land, that the option of TDR does not rest with the land owner, that the land owner cannot insist upon planning authority to acquire the land only by adopting clause (c) of Section 126 of the MRTP Act. We have already clarified the law in this regard and the clarification given by us as above does not permit us to

endorse the view taken in Asha Sunil Zawar (supra) and, therefore, we find that the view so taken therein does not represent the correct position of law."

5. In view of the above, we deem it appropriate to recall our judgment dated 16.09.2021. As such, the same stands recalled. The Review Application stands allowed and Writ Petition No.5938/2020 stands restored to the file.

6. Liberty to the litigating parties in Writ Petition NO.5938/2020 to circulate the said writ petition for passing orders in the light of the judgment of the learned Full Bench in **Shree Vinayak Builders and Developers Vs. The State of Maharashtra and Others** (supra).

(S. G. MEHARE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE