

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

CIVIL APPLICATION (CAW) NO.719 OF 2022
IN
WRIT PETITION NO.917 OF 2020 (D)

Tulsiram s/o Gomaji Tekam, Agriculturist, R/o Dhamna, Hudkeshwar Road, Nagpur

-vs-

State of Maharashtra, Thr. Secretary, Revenue Dept. Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Vikas Kulsange, Advocate for petitioner.
Ms N. P. Mehta, Assistant Government Pleader for
respondent No.3/applicant.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : June 30, 2022

P. C.

By this application the respondent No.3 in Writ Petition No.917/2020 that was decided on 20/12/2021 seeks extension of time of two months for deciding the petitioner's application dated 17/04/2017 made under Section 36-A of the Maharashtra Land Revenue Code, 1966 (for short, the Code). In the civil application various administrative reasons are indicated for failure to decide that application within a period of two months as directed on 20/12/2021. Reply has been filed by the original petitioner opposing the request as made.

2. By the judgment dated 20/12/2021 this Court has directed the State Government to take a decision on the petitioner's application in the light of Section 36-A of the Code within a period of two months failing which the permission as sought by the petitioner was deemed to have been granted at the end of two months. The period of two months expired on 19/02/2022. This civil application has been filed on 30/03/2022. We find that in the light of the judgment dated 20/12//2021, on expiry of period of two months from the date of that judgment, permission as sought by the petitioner under Section 36-A of the Code was deemed to be granted. The deeming fiction has operated on 20/02/2022. Further, acting on the said deemed permission the petitioner has executed a sale-deed of the land in question on 28/03/2022.

In that view of the matter, the prayer made in the application cannot be granted since the deeming fiction indicated in the judgment had operated much prior to filing of the civil application.

The Civil Application is therefore rejected.

Civil Application (CAW) No.829/2022

By this application the respondent No.3 in Writ Petition

No.917/2020 prays that the direction in clause (i) of paragraph 6 of the judgment dated 20/12/2021 be modified and by relaxing the time as fixed, the respondents be permitted to decide the petitioner's application dated 17/04/2017 under Section 36-A of the Maharashtra Land Revenue Code, 1966 (for short, the Code).

2. The reason for moving this application on 12/04/2022 is that the petitioner's application could not be decided within a period of two months for administrative reasons. Another apprehension expressed by filing additional affidavit dated 30/04/2022 is the failure of the petitioner to mention the specific purpose for the intended use of the land under Regulation 4.11 of the Unified Development Control and Promotion Regulations, 2020.

3. Reply has been filed by the original petitioner opposing the prayer as made. It has been stated that in the light of deemed permission under Section 36-A of the Code, the petitioner has sold the land thereafter on 28/03/2022. The purchasers have also filed an undertaking as directed under paragraph 6(ii) of the judgment in Writ Petition No.917/2020.

Hence in these facts there was no reason to modify the directions contained in paragraph 6(i) of the said judgment.

4. We have heard the learned counsel for the parties and we have perused the documents on record. The directions issued in Writ Petition No.917/2020 are clear and self-operating. The State Government was directed to take a decision on the original petitioner's application dated 17/04/2017 under Section 36-A of the Code within a period of two months failing which the application was deemed to have been granted. On expiry of period of two months the deeming fiction operated. Thereafter the original petitioner has sold the land in question on 28/03/2022. Within a period of two weeks of the judgment in Writ Petition No.917/2020, the affidavit along with undertaking stating therein that after transfer of the land the same would be leased for the purposes stipulated under Regulation 4.11 has also been filed. In this backdrop the apprehension expressed by the original respondents that the petitioner had failed to disclose the purpose for which the land would be utilized cannot be a reason for modifying paragraph 6(i) of the said judgment. The purchasers of the land having furnished an undertaking as directed and having stated that land would be strictly used for

the purposes as stipulated under Regulation 4.11 of the Unified Development Control and Promotion Regulations, 2020, the apprehension expressed by the respondents is unfounded. If the purchasers who have furnished the undertaking commit any breach of that undertaking, it is always open for the respondents to take appropriate steps in accordance with law. By clarifying this aspect, we do not find any reason to grant the prayer made in the civil application. It is accordingly rejected.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)

Asmita