

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 2752 OF 2024
IN
WRIT PETITION NO.1940 OF 1999

Abhishek Mahesh Garodia & Ors ...Applicants

In the matter between

Abhishek Mahesh Garodia & Ors ...Petitioners

Versus

Maharashtra Housing Area and Development ...Respondents
Authority & Ors

**Mr Aspi Chinoy, Senior Advocate, with Karl Tamboly, Aseem
Naphade, Kausar Banatwala, Ziyad Madon, Neuty Thakkar &
Ritesh Kursange, i/b Tushar Goradia, for the
Applicants/Petitioners.**

**Mr Navroz H Seervai, Senior Advocate, with Gaurav Srivastav,
Manorama Mohanty, Malika M & Hitanshu Jain, i/b SK
Srivastav & Co, for Respondents No. 3.**

**Mr Virendra Tulzapurkar, Senior Advocate, with PG Lad, Sayli
Apte, Shreya Shah & Anjali Maskar, for the Respondent-
MHADA.**

Ms Prachi Tatake, Addl. GP, for the Respondent-State.

CORAM. M.S. Sonak &
Kamal Khata, JJ

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DATED: 30th September 2024

PC:-

1. Heard learned Counsel for the parties.
2. This is an application seeking the recall of our order dated 26th July 2024 by which we dismissed the Writ Petition No. 1940 of 1999 for non-prosecution/default and for restoration of the Writ Petition and the interim orders granted in this Petition on 18th November 1999.
3. We have considered the averments in the interim order. In particular, the Applicants have stated that their Advocates diligently took steps in the matter. However, since the names of their Advocates did not appear on the cause list on 14th September 2023, 2nd July 2024, and 26 July 2024, even though the new Advocates duly filed their vakalatnamas on 14th April 2023, they missed the matter on the cause list and could not attend to the matter.
4. In paragraph 14 of the Interim Application, it is stated that the Advocates for the Applicants handed over a Pen drive to the Associate of the Court containing the entire record and the re-typed Petition. It was submitted that handing over such a Pen drive constitutes sufficient compliance with the directions issued by this Court in the order dated 20 July 2023.

5. In our judgment, the cause shown in the Interim Application constitutes sufficient cause. The record indicates that the Advocates for the Applicants regularly attended to the matter before 14 September 2023, 2 July 2024, and 26 July 2024. Their non-attendance on these particular dates could be attributable to their names not being reflected in the cause list. These are bonafide lapses, and good cause is shown. An approach that is too rigid in such a matter would not be proper, given the cause shown.

6. For the above reasons, we recall our order dated 26 July 2024 and restore Writ Petition No. 1940 of 1999 to our file.

7. The next question is whether the interim order granted by us on 18 November 1999, which was in effect until we made the order dated 26 July 2024, should be restored.

8. Mr Seervai learned, Senior Advocate for 3rd Respondent relied on *Vareed Jacob Vs Sosamma Geevarghese & Ors*¹. He submitted that since this Court specifically vacated the interim orders while dismissing the petition for non-prosecution, the restoration will not revive such interim orders automatically. He pointed out that as a matter of general rule, restoration of the Suit dismissed for default, all interlocutory orders shall stand revived unless inter alia during the interregnum between the dismissal of the Suit and restoration, there is any alienation in favour of a third party or there is any other factor on record or in the order of

1 (2004) 6 SCC 378.

dismissal to show to the contrary. Mr Seervai submitted that in the present case, several circumstances militate against the restoration of the interim order.

9. Mr Seervai referred to the Affidavit filed by the authorised signatory of the 3rd Respondent. He pointed out that interim relief was granted in 1999 because, at that time, it was contended that the plot in question would be utilised only for setting up a primary school. He submitted that under the development plan for Greater Mumbai, 2034, the plot is now reserved for “other education + hostel”. Therefore, he submitted that the main ground based upon which interim relief was granted in 1999 no longer survives.

10. Mr Seervai also submitted that the 3rd Respondent had applied for and obtained permissions from MHADA, paying Rs. 78,32,300/- and Rs. 2,97,27,716/- towards fees and ground rent. He pointed out that under the permissions obtained from MHADA, the 3rd Respondent has also constructed a compound wall to protect the plot in question. Mr Seervai submitted that if, at this stage, the interim relief is restored, serious prejudice will be caused to the 3rd Respondent. He submitted that if the Petition succeeds, the 3rd Respondent can always be called upon to pull down the compound wall and restore the plot to its original position.

11. We have considered Mr Seervai’s submissions, but for reasons that we shall briefly indicate, we propose to restore the interim relief that was operating from 18 November 1999 to 26

July 2024, when the Petition came to be dismissed for non-prosecution.

12. Admittedly, from 18 November 1999, parties have obtained a status quo regarding the subject plot. Only sometime in August 2024 was the 3rd Respondent granted permission to put up the compound wall enclosing the subject plot. Therefore, it is not as if some substantial construction is put up on the subject plot. The construction was put up after the 3rd Respondent was served with the restoration application. Even the payment of the above amounts was after the service of the restoration application though the applications for permission may have been filed before. The application for restoration was filed on 17 August 2024, i.e., within 30 days from the order dated 26 July 2024. Therefore, it would be rather harsh not to restore the interim relief now that we have held that there was sufficient cause for non-appearance on 26 July 2024. Besides, since this is an old case, we propose to fix it for a final hearing peremptorily on 23 October 2024.

13. At this stage, if we allow the status quo to change, serious prejudice could be caused to the Petitioners. Since the Petitioners have made a case for restoration, it would not be appropriate for us not to continue the interim relief unless there are exceptional reasons to refuse to do so. No such case is made by the respondents who now oppose the restoration of the interim relief that was operating since 18 November 1999.

14. In *Kallo (Smt) alias Kalawati Vs Pyari Begum (Smt) & Anr*² the Hon'ble Supreme Court has explained that whatever may be the need or justification for restoration of the Writ Petition earlier dismissed for default, once the High Court records the view that the reason assigned for seeking restoration is "sufficient" for restoration, *it should ordinarily and invariably, though not as an inviolable rule follow that the possession of the Writ Petitioner, which has been earlier protected by the grant of stay of dispossession should also continue to be protected pending disposal of the main Writ Petition unless there are any special or exceptional reasons to refuse to continue the benefit of stay already granted.* The Supreme Court has explained that otherwise, this could lead to an anomalous situation and unnecessary multiplication of proceedings when relief is granted in the main Writ Petition. It would also result in the denial of the full fruits of the restoration of the Writ Petition ordered by the Court.

15. If ultimately it is found that the Petition is required to be dismissed on merits and the interim order granted has to be consequentially vacated, the 3rd Respondent can always claim necessary compensation. It is well settled that the party that obtains interim relief is always subject to the requirement of compensating the opposite party. If, ultimately, it is found that the Petition on merits was misconceived and the interim relief was not correctly and fairly obtained. At this stage, however, we do not think there are any special or exceptional reasons to refuse to restore the interim relief that operated from 18th November 1999.

2 (2002) 7 SCC 764.

16. Even though the compound wall may have been constructed enclosing the subject, the status quo as it now stands can always be maintained. We direct the maintenance of such status quo pending for final disposal of this Petition.

17. We also direct that Writ Petition No. 1940 of 1999 be placed for final hearing on 23rd October 2024 at 2.30 pm, subject to overnight part-heard.

18. The Interim Application is disposed of by restoring Writ Petition No. 1940 of 1999 and the interim relief operating therein. This means maintaining the status quo as of now. There shall be no order for costs.

(Kamal Khata, J)

(M.S. Sonak, J)