



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

CIVIL APPLICATION (CAO) NO 2013 OF 2016

IN

MISCELLANEOUS CIVIL APPLICATION (REVIEW) ST.NO.23977 OF 2016

IN

WRIT PETITION NO. 3715 OF 2012 (D)

(The State of Maharashtra Vs. Sikh education Society and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.A. Kadukar, Assistant Government Pleader for applicant.
Mr. Rajesh Manmode, Advocate for respondent No.1.
Mr. S.M. Puranik, Advocate for respondent No. 3.
Mr. R.L. Khapre, Senior Advocate assisted by Mr. P.A. Deshpande, Advocate for
respondent No. 5.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 02-09-2024

The respondent No. 1 approached this Court through Writ Petition No. 3715/2012 seeking removal of encroachment of respondent No. 6 on land bearing Khasara No. 86, Mouza – Nari, Tahsil and District Nagpur.

2. This Court by a reasoned order directed the respondent State Government – Forest Department to take all possible steps for change of user from garden (Forest Department) or as the case may be to that of burial ground for the people belonging to petitioner religion.

3. Mr. Kadukar, the learned Assistant Government Pleader while urging for condonation of delay and setting aside the above order, in review jurisdiction would urge that the Forest Department was not granted sufficient opportunity to resist the claim put forth by the petitioner in the said petition. According to him, even otherwise, the land in question viz. Khasara No. 86, Mouza – Nari is marked as 'zudpi jungle' and cannot be

subjected to change of user without there being approval from Environment and Forest Ministry of Government of India. He would as such claim that unless the Government of India is a party respondent to the petition and in absence of there being positive directions to the Government of India, the change of user cannot be effected. So as to substantiate his contention, he would invite our attention to paragraph 6 onward of the judgment delivered on 29.11.2013.

4. As against above, Mr. Khapre, the learned Senior Counsel appearing for the original respondent No. 6, who is non-applicant No. 5 to the present application, through an affidavit duly sworn by the Secretary of respondent No. 6 has placed on record the proposals forwarded by the Forest Department to the Government of India, Ministry of Environment, Forest and Climate Change. Mr. Khapre would urge that the proposals are pending with the Central Government since 2018 which fact ought to have been placed on record by the Review applicant viz. State Government. According to him in absence of sufficient cause in support of the prayer for order on the application for condonation of delay, this Court should reject the prayer for condonation of delay.

5. Having appreciated the claim put forth in the present application, it is apparent that the review jurisdiction of this Court is sought to be invoked on the ground that the respondent No. 5 Forest Department.

6. The fact remains that this Court has caused notice to the Forest Department in the petition and the learned Assistant

Government Pleader appeared for the respondent No. 5 Forest Department.

7. The petition was decided by this Court after hearing the Assistant Government Pleader, who was also representing the respondent – Forest Department. At no point of time specific plea was raised that the Forest Department be directed to file reply which can be said to have been rejected by the Court while deciding the petition on 23.11.2013. It was for the State forest department to file reply resisting the claim in the petition which they have failed to.

8. Apart from above once the Court ordered notices to the parties to the petition and such notices are served, in our opinion, it is not required under the rules and procedure of the Court to every now and then serve invitation to the parties for filing their replies. That being so, there is no substance in the said contention.

9. Apart from above, it is apparent from the affidavit placed on record by the non-applicant No. 5 i.e. original respondent No. 6 that the State Government has already moved to Central Government for change of user as was directed by this Court and such proposal is pending consideration since last more than six years.

10. The document to that effect placed on record through an affidavit by respondent No. 6 is accepted.

11. Even otherwise if we peruse the case cited in support of prayer for condonation of delay, there is no sufficient or

bonafide reasons so as to infer that delay was unintentional and bonafide.

12. That being so, we see no cause to interfere in the review jurisdiction. The Review Application being devoid of merit stands rejected.

13. As a sequel of rejection of Review Application, all the pending applications stand disposed of.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Belkhede