

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION Diary No.43909/2024

IN

C.A.No. 2640/2016

PRATIKSHA TOWER CO-OPERATIVE HOUSING SOCIETY LIMITED Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

O R D E R

1. Application seeking permission to file the Miscellaneous Application is allowed.
2. Application seeking condonation of delay of 2676 days in filing the Miscellaneous Application is allowed.
3. Application seeking permission to file the impleadment application is allowed.
4. Application seeking impleadment of the applicant as party Respondent No.2 is allowed.
5. Cause title be amended accordingly.
6. This Miscellaneous Application is at the instance of a Co-operative Housing Society seeking recall/clarification of the order passed by this Court dated 27-4-2017 in Civil Appeal No.2640/2016.
7. To be precise, the prayers in the Miscellaneous Application read thus:-

"a. Recall the Order dated 27 April 2017 passed by this

Hon'ble Court in C.A. No. 2640 of 2016; OR

b. Alternatively, clarify that the Order dated 27 April 2017 passed by this Hon'ble Court in C.A. No. 2640 of 2016 does not decide the ownership of land measuring 2000 sq. mts. reserved for Recreational Ground in C.S. No. 1/255 of Tardeo Division at R.S. Nimkar Marg, Tardeo, Mumbai and does not affect the Applicant's rights and entitlement over the said land".

8. At the outset, Mr. Neeraj Kishan Kaul, the learned Senior counsel submitted that the prayer (A) seeking recall is not pressed. Mr. Kaul made a fervent appeal to this Court to appropriately clarify as regards the ownership of land measuring 2000 sq. ft. reserved for recreational ground in CS No.1/255, Tardeo Division at R.S. Nimkar Marg, Tardeo, Mumbai.

9. According to Mr. Kaul, the members of the Cooperative Society have something to say as regards their rights and entitlements over 40% of the said parcel of land which has come to the share of the builder.

10. We take notice of the fact that the litigation which led to Civil Appeal No.2640/2016 was between the Builder/Developer and the Corporation.

11. We take notice of the observations made by this Court while disposing of Civil Appeal, referred to above, more particularly Para 12 which reads thus:-

"We have considered the matter. Strictly speaking, the Policy is not applicable in the instant case. However, both the parties want that to be the basis for resolving the controversy. For this reason, the appellant is not pressing its challenge predicated on Section 127 of the MRTP Act.

However, at the same time, it wants some modification of policy terms in its favour. This constructive approach of both the parties commends to us. Having regard to the peculiar facts of this case and that the Municipal Corporation has defaulted in certain respects, we are of the view that ends of justice would be sub-served if we allow the owner/appellant to develop the reservation of 60% of land and after handing over it to the Planning Authority free of cost, then remaining 40% land is allowed to be developed as per the adjoining use, subject to the conditions that are mentioned in the Policy dated May 02, 2016."

12. It is also not in dispute that in the litigation between the Builder and the Corporation, the Society was not one of the parties before this Court.

13. Mr. Kaul invited our attention to the fact that the issue sought to be raised before this Court was looked into by the District Sub-Registrar Cooperative Society, Mumbai (1), City (a statutory authority) in Application No.7/22 preferred by the applicants herein & the same came to be disposed of vide order dated 2-2-2023 in the following terms:-

"According to conferred Authority to me under clause 11 (3) of Maharashtra Ownership Houses (To encourage to construct them, their sale, Management & Transfer Control) I, J.D. Patil. Competent Authority or District Sub Registrar, Co-operative Society, Mumbai (1), City through this accepting to issue Certificate regarding the Deemed Conveyance Application submitted by Applicant Pratiksha Tower Co- operative Housing society Ltd., C.S. No.1/255, Tardeo Division, Dr. R.S. Nimkar Marg, Tardeo, Mumbai - 400 008 is eligible to issue one Party Deemed Conveyance & it

is eligible to be registered. Accordingly serving Conveyance Certificate herewith. Deemed To complete procedure of Deemed Conveyance, Applicant Society should take further action as per Govt. Decision dt.22/06/2018 at Maharashtra govt. Co- operative, Marketing & Textile Industry Division.

1) According to above Order & Certificate Deemed Conveyance along with essential documents should be submitted for Adjudication at Hon. Stamp Collector and Co- District Registrar Office and should deposit Stamp Duty as per his Order.

2) Accordingly after completion as above for signature to be taken on Deemed Conveyance Document should be submitted to this Office on behalf of Developer/Owner.

3) Deemed Conveyance Document signed by Competent Authority should be registered to relevant Secondary Registrar.

4) To be get register, in the name of Society on Authority Record, submitting above Regd. Document & Index II & other essential documents along with Application at Relevant Officer (Talathi/ Town Survey Officer) and take essential action to get registered the name of the Society."

14. We are further informed that this order passed by the Authority referred to above is now a subject matter of challenge before the Bombay High Court by way of a Writ Petition No.21508/2024.

15. The other side pointed out that there is a civil suit also instituted by the applicants - herein.

16. Mr. Kaul would submit that the judgment and order passed by this Court disposing of Civil Appeal vide order dated 27-4-2017 is coming in the way of his clients. According to him, it should not come in the way of his clients because at the relevant point of

time, his clients were not in picture.

17. In such circumstances, it has been prayed that the order passed by this Court in Civil Appeal may be clarified or modified to the extent of the plea raised by the applicants - herein.

18. We also heard Mr. Mukul Rohatgi, the learned Senior counsel appearing for the Builder and Mr. Dhruv Mehta, the learned Senior counsel appearing for the Corporation. This application has been vehemently opposed by Mr. Mukul Rohatgi, the learned Senior counsel as well as by Mr. Dhruv Mehta, the learned Senior counsel. Both the learned Senior counsel submitted that the presence of the applicants - herein was not at all necessary when this Court took up the Civil Appeal for hearing. It was submitted that the applicants were well aware of these proceedings which reached right upto this Court.

19. We are of the view that we should not say anything as regards what has been observed by this Court in the judgment and order dated 27-4-2017 disposing of the Civil Appeal.

20. Since the entire matter is now at large before the High Court, it is for the said Court to look into the order passed by this Court and take an appropriate decision as regards what is sought to be submitted today before us, i.e., the rights of the applicants so far as the disputed plot is concerned and that too to the extent of 40% which has gone to the builder.

21. We take notice of the fact that the civil appeal was disposed of way back in 2017. In such circumstances, now after a period of 7 years, it will not be appropriate for us to say anything further.

22. It may be true that the Statutory Authority passed the order dated 2.2.2023 relying on the judgment of this Court, however, as the issues are wide open before the High Court, we leave it for the High Court to look into the matter after hearing all the parties concerned.

23. The Miscellaneous Application is disposed of in the above-terms.

24. All pending applications also stand disposed of.

.....J
(J.B. PARDIWALA)

.....J
(R. MAHADEVAN)

NEW DELHI
6TH DECEMBER, 2024.

ITEM NO.52

COURT NO.15

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

MISCELLANEOUS APPLICATION Diary No.43909/2024 IN C.A.No. 2640/2016

PRATIKSHA TOWER CO-OPERATIVE HOUSING SOCIETY LIMITED Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

(IA No. 220219/2024 - APPLICATION FOR PERMISSION, IA No. 261822/2024 - CONDONATION OF DELAY IN FILING, IA No. 220221/2024 - EXEMPTION FROM FILING O.T., IA No. 220218/2024 - INTERVENTION/IMPLEADMENT & IA No. 220214/2024 - RECALLING THE COURTS ORDER)

Date : 06-12-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s)

Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Mayur Khandeparkar, Adv.
Mr. Sharad Bansal, Adv.
Mr. Siddhant Buxy, AOR
Mr. Pratik Kothari, Adv.
Mr. Ritesh K. Jain, Adv.
Mr. Krishkumar A. Jain, Adv.
Mr. Kalpesh A. Bandre, Adv.
Ms. Tabeer, Adv.
Ms. Shambhavi Padhye, Adv.

For Respondent(s)

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Kunal Vajani, Adv.
Mr. Nikhil Rohatgi, Adv.
Mr. Tushad Kakalia, Adv.
Mr. Samit Shukla, Adv.
Ms. Delnavaz Patel, Adv.
Mr. Mustafa Nulwala, Adv.
For M/s. D.S.K. Legal, AOR

Mr. Dhruv Mehta, Sr. Adv.
Mr. Ashish Wad, Adv.
Mr. Manoj Wad, Adv.
Ms. Akriti Arya, Adv.
Ms. Swati Arya, Adv.
Ms. Nishi Sangtani, Adv.
For M/s. J.S. Wad & Co., AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Application seeking permission to file the Miscellaneous Application is allowed.
2. Application seeking condonation of delay of 2676 days in filing the Miscellaneous Application is allowed.
3. Application seeking permission to file the impleadment application is allowed.
4. Application seeking impleadment of the applicant as party Respondent No.2 is allowed.
5. Cause title be amended accordingly.
6. The Miscellaneous Application is disposed of, in terms of the signed order.
7. All pending applications also stand disposed of.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

(Signed Order is placed on the file)