

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION [LD.] NO. 476 OF 2019**  
**IN**  
**WRIT PETITION NO. 3013 OF 2018**

Narrottham Chittranjan Sharma. ..Applicant.

In the matter between :

Tirandaz Shubh Niketan CHS Ltd & Others. ..Petitioners.

Versus

Union of India and Others. ..Respondents.

*Mr. Vikram Nankani, Senior Advocate with Mr. Prakash Shah i/b  
Mr. S. K. Saxena for the Applicant.*

*Mr. Anil C. Singh, Additional Solicitor General with Parag Vyas,  
Aditya Thakkar, yashodeep Deshmukh, Carina Xavier, Mayur  
Jaiingh, G. Ansari for Respondent No. 1 to 3.*

*Mr. S. B. Gore, AGP for the Respondent No.4-State*

Coram : RANJIT MORE &  
BHARATI H. DANGRE, JJ.

Date : **September 27, 2019.**

P. C. :

1. Heard. The application is made for the following  
relief :

*“(a) That this Hon'ble Court may be pleased to clarify  
its judgment and order dated 27.02.2009 (at Exhibit-C of  
the Affidavit in Support) passed in Writ Petition 3013 of  
2018, as to whether the findings and conclusions recorded  
while issuing directions to the Respondent Nos.1-3 are not  
to be treated as binding on the Respondents in respect to  
the projects in the same vicinity of Naval Residential  
Colony at Kanjur Marg, as is being interpreted by the  
Respondents, despite absence of any specific observation  
“that judgment shall not be treated as binding precedent”  
and in light of the judgment of this Hon'ble Supreme Court  
in Baradkanta Mishra v. Bhimsen Dikshit”*

2. It is the claim of the Applicant that he desires to construct a cinema theater building on a plot of land bearing CTS No.75, 75/2 to 17 of village Tirandaz, "S" Ward, owned by the Applicant which is situated near Navy Residential Colony at Kanjur Marg. However, despite frantic efforts and placing reliance on the decision of Apex Court in Baradakanta Mishra v. Bhimsen Dixit [(1973) 1 SCC 446], the Applicant has not been granted No-objection Certificate / permission by the Respondents.

3. On behalf of the Applicant, it is submitted that the judgment of this Court is always binding on all the citizens - subjects throughout the territory of concerned State. In paragraph Nos.29 and 30 of the judgment dated 27<sup>th</sup> February 2019 passed in above writ petition, the circumstances leading to the judgment are mentioned in a considerable detail. There is no indication in the judgment, even remotely, that it is not to be treated as a binding precedent. Needless to state that the Respondents are bound by the above judgment of this Court, being dated 27<sup>th</sup> February 2019 including all other cases concerning the identically situated projects in the same vicinity of naval residential colony at Kanjur Marg. The reliance is

placed on the decision of the apex Court in Baradakanta Mishra (supra), which clearly lays down the law as under :

“The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and malafide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law.

Our view that deliberate and malafide conduct of not following the binding precedent of the High Court is contumacious does not unduly enlarge the domain of contempt. It would not stifle a bona fide act of distinguishing the binding precedent, even though it may turn out to be mistaken.”

4. Admittedly, the Applicant was not amongst the parties in the above writ petition. We are of the view of that it is not open for the Applicant to seek intervention for seeking clarification in the disposed of writ petition.

5. Our judgment is clear, elaborate and binding on

the Respondents for the project in the same vicinity of naval residential colony at Kanjur Marg. Once the judgment is delivered by this Court on a particular issue, all identical matters are to be dealt with by the executive in the light of the said decision; they cannot relegate the citizens to the Court for seeking similar orders by abdicating their executive functions.

6. As a matter of fact, this Court while setting aside the objection raised by Navy and Mumbai Municipal Corporation, has not granted any relaxation from conditions imposed by the planning authority in terms of its regulations. It goes without saying that our judgment is binding on all the similarly placed projects in the same vicinity.

7. In view of the above observations of the apex Court in Baradakanta (supra), if the Applicant is really aggrieved due to non compliance of our judgment, the remedy of the Applicant can be in contempt jurisdiction but not by way of clarification.

8. In that view of the matter, notice of motion is disposed of.

**[SMT. BHARATI H. DANGRE, J.]**

**[RANJIT MORE, J.]**