

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 94 OF 2015
IN
WRIT PETITION NO. 963 OF 2014**

Sahebrao Namdeorao Sonawane,
Age: 49 years, Occ : Business,
R/o. Shop No. 50, Mahatma Jyotiba
Phule Central Market, Jalgaon,
Jalgaon, Tq. & Dist. Jalgaon & ors.

...Applicants

versus

The State of Maharashtra
Through Secretary,
Department of Urban Development,
Mantralaya, Mumbai -32 & ors.

...Respondents

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Mr. S. P. Brahme, Advocate for applicants.
Mr. G. R. Ingole, A.G.P. for respondent/State.
Mr. P. A. Pisal, Advocate h/f Mr. P. R. Patil, Advocate for respondent No. 3

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CORAM : N.W. SAMBRE, J.

DATE : 22nd JUNE, 2015

ORAL ORDER :

1. Heard Mr. Brahme, learned Counsel for review applicants.

2. The review applicants filed present review application relying upon the judgment of the Apex Court in the matter of **Union of India vs. Sandur Manganese & Iron Ores Ltd. & ors.** reported in

AIR 2013 (SCW) 2905, as according to him, the applicants' points, which were canvassed were not considered. In support of his contention, he has placed reliance upon para 24 of the said judgment which reads thus:

“ In the present case, the error contemplated in the impugned judgment is not one which is apparent on the face of the record rather the dispute is wholly founded on the point of interpretation and applicability of section 11(2) and 11(4) of the MMDR Act. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction. Hence, in review jurisdiction, the court shall interfere only when there is a glaring omission or patent mistake or when a grave error has crept in the impugned judgment, which we fail to notice in the present case.”

3. Based on the above legal right, learned Counsel for the review applicants would urge that, agreement which was entered between the applicants and Municipal Corporation contains recitals in relation to renewal of lease period. He would further urge that, there is a resolution passed by the Municipal Corporation as is reflected in the reply filed by Mayor before the Collector intimating about extension of three years period by virtue of resolution dated 29/3/2012 qua possession of the review applicants.

4. According to him, in view of such recitals, applicants were in lawful possession and were entitled to continue, should have been appreciated and lost sight by this Court.

5. In addition to above, learned Counsel for review applicants would urge that, judgment relied by this Court in the matter of **Ramchandra Jivatram Chetwani through power of attorney holder Mrs Poonam Deepak Amar vs. Pune Municipla Corporation & ors. [2013 (1) Mh.L.J. 245]** pertaining to Pune Municipal Corporation and law laid down by the Apex Court in the matter of **Bombay Municipal Corporation vs. Dhondu Narayan Choudhary (A.I.R. 1965 S.C. 1486)** is wrongly appreciated, particularly in the background of provision of old Act of 1988 i.e. Bombay Municipal Corporation Act, as according to him, same is not in paramateria with the provisions of new Bombay Act. According to him, in the judgment of Ramchandra cited supra, neither any relevant clause was provided nor there were powers prescribed delegating the authority to the Commissioner to pass order of eviction. According to him, the provision cannot be termed as *pari materia* in relation to Bombay Municipal Corporation Act. In addition to above, he would submit that, reliance placed upon the judgment in the matter of **Kalinga Mining Corporation vs. Union of India & ors.**

[(2013) 5 SCC 252] is also misplaced, as according to him, the concept of institutional hearing in the said matter was permitted in view of the directions of the High Court, whereas in absence of any such directions in the present case, the said order ought not to have been permitted.

6. Upon considerations of submissions made by the learned Counsel for the review applicants, which are opposed by learned A.G.P. and learned Counsel for the Corporation, it is required to be noted that, the principles which permits the Court to deal with the applications for review are already enumerated in the judgment of the Apex Court in the matter of **Kamesh Verma vs. Mayawati** reported in **2013 (8) SCC 320** in para No. 20. Therefore, this Court is required to ensure in the light of submission and law laid down by Apex Court in the above decision as to whether it is open for this Court to invoke review jurisdiction. Para No. 20 reads thus:

“Summary of the Principles:

20) Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1) When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of

the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius & Ors., (1955) 1 SCR 520, to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275.

20.2) When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

7. This Court, having appreciated the contentions raised by respective parties at relevant time based on evidence available on record has already formed opinion that lawful possession of the applicants was not proved subsequent to expiry of lease period. Apart from above, the judgment in the case of **Ramchandra Chetwani** and in the matter of **Kalinga Mining Corporation** were duly considered having regard to factual matrix, as was brought to the notice of this Court.

8. In view of above, in my opinion, it will be inappropriate for this Court to reappreciate and to reconsider the submissions, so as to reach to different view, upon reappreciating the pleadings and evidence afresh.

9. In my opinion, no case for review is made out. Review Application fails, stands dismissed.

10. At this stage, Mr. Brahme, learned Counsel for the review applicants prays for continuation of interim relief which was granted by this Court on 08/05/2015.

11. Said request is opposed by learned Counsel for Corporation on the ground that, already protection of four weeks is enjoyed by the applicants. This Court has already protected the present applicants after delivering the judgment on 08/05/2015 for a period of four weeks.

12. In my opinion, it will be now inappropriate to grant further protection to the applicants, as contentions of the applicants-petitioners were already dealt with on merit and the petition was dismissed. In view of above, the prayer for extension of relief stands rejected.

[N.W. SAMBRE, J.]