

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 3 OF 2015

M/s. Real Estate Agencies
A registered Partnership Firm
Through its Partner Shri Kedar R. Kakodkar,
Indian Inhabitant,
Residing at Plot no. D/8
La Campala, Miramar, Panaji, Goa.

... Applicant
Ori. Petitioner

V e r s u s

1. Government of Goa,
Through the Public Works Department,.
Altinho, Panaji, Goa.
2. Corporation of City of Panji, Goa,
Through its Commissioner,
Mr. Elvis Gomes
3. Office of the Deputy Collector &
SDO, Panji, Goa.

... Respondents
Ori. Respondents

Mr. Rajendra Pai with Mr. S. Taleigaonkar, Advocates for the Applicant-Original Petitioner.

Mr. A. N. S. Nadkarni, Advocate General with Ms. N. Kholkar, Addl. Government Advocate for the Respondent nos. 1 and 3.

Mr. Shivan Desai, Advocate for the Respondent no. 2.

Coram :- **F. M. REIS,**
K. L. WADANE, JJ.

Order Reserved on : 4th February, 2015

Order Pronounced on : 4th March, 2015

ORDER (Per F. M. Reis, J.)

Heard Shri Rajendra Pai, learned Counsel appearing for the

Applicant-Original Petitioner, Shri A. N. S. Nadkarni, learned Advocate General appearing for the Respondent nos. 1 and 3 and Shri Shivan Desai, learned Counsel appearing for the Respondent no. 2.

2. The above application filed by the Petitioner is to recall review Order dated 16.12.2014 rejecting the above Writ petition.

3. The application is mainly on the ground that the said Order dated 16.12.2014 suffers from an error apparent on the face of record and is otherwise required to be recalled on the ground that material and relevant facts and evidence which were learnt by the Petitioner during the pendency of the above Writ Petition and subsequent thereto were not examined. It is further their case that on account of such subsequent knowledge, such facts and events although known to the Respondents but not placed on record in the body of the Petition by the Petitioner who gained knowledge thereof subsequent to the filing of the Petition. It is the case of the Petitioner that the above Writ Petition came to be filed to object the activity carried out by the Respondents in the property surveyed under chalta no. 18 of P. T. Sheet no. 120 admeasuring an area of 19250 square metres or any part thereof in La Campala Colony at Miramar, Panaji, Goa. It is further the case of the Petitioner that a lay out plan for the development of the whole property was proposed by the Respondent no. 2 under the Goa Daman and Diu Buildings Bye Laws and Regulations 1965 where-under the Petitioner had duly obtained permission and sanction for the said larger property including the suit plot which was demarcated as open space. It is further their case that the Respondents without following the due process of law and in a highhanded manner forcibly took over possession of

the suit plot for carrying out activities of public purpose of proposed development and beautification. It is also the case of the Petitioner that their claim of title to the suit plot was unquestionable and undisputed on the basis of the documents. It is further their case that subject to the restrictions imposed by the Judgment dated 26.04.1990 in the Letters Patent Appeal no. 260 of 1983 the ownership of the Petitioner in respect of the suit plot of the entire 19250 square metres stood confirmed. It is further the contention of the Petitioner that an area of 625 square metres which forms the part of the said suit plot was required for public purpose of constructing of a Sewage Pump House of the Respondents and the compensation thereof was duly paid by the Respondents at the time of such acquisition. It is further their case that none of these facts are disputed in the present case. It is further their case that the Hon'ble Apex Court by an Order dated 10.09.2012 whilst disposing of Civil Appeal No. 6383 of 2012, inter alia, held that the Petitioner should be left with an option of raising a claim before the appropriate forum for such loss and compensation, if any, to which he may be entitled in law. It is further their case that in the above Writ Petition, the Petitioner had sought, inter alia, for a direction to the Respondents herein to enforce the Order contained in the letter dated 30.06.2010 and forthwith acquired the suit plot in accordance with law and pay due compensation to the Petitioner. It is also their contention that Respondents filed various affidavits opposing the above Writ Petition on the ground of res judicata and had contended that the Petitioner had an alternate remedy by way of suit and it was further contended that in view of the complaints received by the residents of La Campala Colony, the Respondents had undertaken the development and beautification of the suit plot which contention, according to the Petitioner, were negative by the Hon'ble Apex Court. It is also their case that the

Respondent no. 1 had stated at para 4 of the affidavit that the plot where the beautification work is being carried out is designated as “open space” and such open space was kept open by the Petitioner while developing the larger property in a scheme or plot known as “La Campala Colony” and that such open space is designated under Zone 'R' i.e. reserved for parks, playgrounds, jogging, etc., under the Outline Development Plan for Panaji, which was notified on 22.01.2009. It is further their case that such admission on the part of the Respondent no. 1 that the suit plot was reserved and designated as Zone 'R' under the Goa Daman and Diu Town Planning Act, 1974, which would mean that it is deemed to be a publication of the Notification under Section 4 of the Land Acquisition Act, 1894. The Petitioner has further pointed out that they had learnt that Respondent no. 1 has also published the Outline Development Plan under Section 37 of the Planning Act which is deemed to be a Notification under Section 6 of the Land Acquisition Act, 1894. It is the contention of the Petitioner that the Notification under Section 6 of the Land Acquisition Act, has been published by the Respondent no. 1 and that the suit plot was required to be acquired under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act of 2013. It is further their case that under Review Order dated 16.12.2014, this Court dismissed the Writ Petition which requires to be recalled and reviewed and set aside on the ground that there is an error apparent on the face of record in not directing the Respondents to acquire the said plot as prayed for specially in the light of the said admissions in the affidavit dated 04.12.2012. It is further their case that it is apparent on the face of record to deny the Petitioners the benefit of Land Acquisition proceedings especially because the suit plot was reserved under the Planning Act as 'R' Zone though the suit plot is unable to be utilised for any other

purpose.

4. Shri Rajendra Pai, learned Counsel appearing for the Petitioner, has vehemently submitted that the fact that the land was already reserved as 'R' Zone for recreation facilities in the Outline Development Plan, came to be known to the Petitioner only on the basis of the affidavit which was filed in the above Writ Petition. Learned Counsel further pointed out that these facts were not to the knowledge of the Petitioner where the earlier Writ Petition was filed and, as such, according to him, these facts were not incorporated in the above Writ Petition. Learned Counsel further pointed out that the Respondent no. 1 has deliberately suppressed these facts at the time of the hearing of the above Writ Petition and, as such, there is an error apparent on the face of record which would require the recall and/or the review of the Order dated 16.12.2014. Learned Counsel has thereafter taken us extensively through the affidavits filed in the above Writ Petition as well as the relevant provisions of the Town and Country Planning Act to point out that the fact of such reservations in the Outlined Development Plan according to the learned Counsel has already been notified in 2009. Learned Counsel further submits that grave injustice would occasion to the Petitioner in case the Order under review is not recalled as, according to him, the Petitioners are entitled for compensation in terms of the Land Acquisition Act. Learned Counsel as such points out that as there are sufficient reasons for recalling the said Order, in the interest of justice, it would be appropriate to re-argue the above Writ Petition in accordance with law. In support of his submissions, the learned Counsel has relied upon the Judgments reported in **AIR 2005 SC 488** in the case of **State of UP & Ors. vs. Manohar**, **AIR 2004SC 1738** in the case of **Green View Tea and Industries vs.**

Collector, Golaghat, Assam & Anr. and the Judgment dated 28.03.2014 reported in **AIR 2014 SC 1686** in the case of **Usha Bharti vs. State of U. P. & Ors.**

5. On the other hand, Shri A. N. S. Nadkarni, learned Advocate General appearing for the Respondent nos. 1 and 3, has opposed the above Review Petition. The learned Advocate General, has pointed out that there is no error apparent on the face of record within the meaning of the provisions of Section 114 and Order 47 of the Civil Procedure Code which would call for any review of the said Order dismissing the Writ Petition. The learned Advocate General further pointed out that the authorities have only beautified the place and that they are not claiming any right to the property where such recreation facilities have been provided. Learned Advocate General further pointed out that these plots were kept open spaces for the residents of the La Campala Colony for recreation facilities and, as the land was in a very bad shape having shrubs and bushes around, at the request of the local residents, the authorities beautified the place by providing a jogging track and other amenities for the benefit of the Colony. Learned Advocate General further pointed out that the land is not vested in the State Government in view of the beautification carried out in the locality. The learned Advocate General further submits that the Petitioner who were also developers at the time of the original sub-division, has taken benefit of such open space by claiming advantage of additional FAR for such open space. Learned Advocate General further submitted that this Court only found that the Petitioners were not entitled to file the Writ Petition whilst disposing of the above Writ Petition and, as such, there is no error apparent on the face of record which calls for review of the order of this Court.

6. Mr. Shivan Desai, learned Counsel appearing for the Respondent no. 3, has supported the submission of the learned Advocate General. Learned Counsel further submits that the land has not been vested in the authorities merely because beautification has been carried out which otherwise was the duty of the Petitioners. Learned Counsel further pointed out that keeping the area in a very bad shape by the Petitioner was an eyesore which required the authorities to take action to clear up such area. Learned Counsel has further pointed out that the earlier Writ Petition was filed by the Petitioners on the ground that the activities carried out by the authorities were without initiating proceedings for acquisition which, according to the Petitioners, is violative of his ownership rights which Petition came to be disposed of by the Apex Court in Civil Appeal no. 6383 of 2012 by Judgment dated 10.09.2012. Learned Counsel further submits that in the said Judgment of the Apex Court dated 10.09.2012, it is observed that there is no manner of doubt that the land in question being earmarked for open space normally attributes of legal ownership of the land have ceased in so far as the Petitioner herein is concerned and holding the land could at the most be considered to a Trustee on behalf of the residents of the colony. Learned Counsel further pointed out that there is no error apparent on the face of record which would call for any recall of the Order dated 16.12.2014.

7. We have given our thoughtful consideration to the rival contentions. We have also gone through the records. This Court whilst disposing of the above Writ Petition has taken note of the observations of the Apex Court whilst disposing of the said Civil Appeal no. 6383/2012 at Para 11, 12 and 13 inter alia that the Petitioner had to raise a claim before an appropriate forum for such loss and

compensation, if any, which he may be entitled in law and that as a claim to such compensation is referable to title/ownership or any other such relevant fact the Petitioners shall have to avail of an appropriate remedy available in law. This Court has also observed whilst disposing off the above Writ Petition that it is the stand of the State Government that the object of creating recreation facilities, beautification of an open space is for the benefit and enjoyment of the residents of the locality and since the Petitioner/builder had not performed his obligation, the State was required to accept the request of the residents. The fact that the State Government is not claiming any title over the property in question and that the development activities have been undertaken at the instance of the residents of the locality and for the beneficial use of the residents of the Urban area has also been noted and, as such, found that the directions prayed for in the Petition need not be given. On going through the said Order passed by this Court dated 16.12.2014, the fact that the earlier grievances of the Petitioner in the earlier Writ Petition was that the same development activities have been carried out without re-course to acquisition has been noted. In such circumstances, this Court found that the remedy of issuing a relief of further directions to acquire the land would not at all be justified.

8. The contention of Shri Pai, learned Counsel appearing for the Petitioner, that in view of the fact that the land has been shown as 'R' Zone in the Outline Development Plan, would imply that the Notification under Sections 4 and 6 was complied with was not even argued nor made the foundation of the above Writ Petition. Shri Pai, learned Counsel appearing for the Petitioners, fairly concedes that there were no submissions in the earlier Petition to claim such reliefs. The only contention is that such facts were admitted by the Respondent no.

1 in their affidavit. Admittedly, there was no arguments to that effect whilst disposing of the above Writ Petition. In any event, the Hon'ble Apex Court has clearly noted that the Petitioner should be left with an option of raising a claim before the appropriate forum for such loss and compensation if any to which he may be entitled to in law and that in case any such claim is required to be founded on proof of title/ownership or any such relevant facts, the Petitioner will have to establish the same and that no part of the said Order shall be construed to be an expression of any opinion with regard to the ownership or any other right or entitlement of the Petitioner which have to be proved in accordance with law. In such circumstances, this Court found that the remedy of filing the Writ Petition was not appropriate and, as such, the directions claimed could not be issued.

9. No doubt, the power to review inhere in every Court to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, however, such power is to be exercised only when there is an error apparent on the face of record or when there is a discovery of new material or evidence which after exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time the Order was made. An error is said to be apparent on the face of record when it does not require low drawn process of reasoning. In the present case, as pointed out herein above, the fact that the land in dispute was shown as 'R' Zone in the Outline Development Plan was not the foundation in which the relief was sought by the Petitioners in the Petition. Apart from that, the Petitioner did not dispute that such Notification was issued way back in the year 2009. The Petitioner is the builder and it cannot be said that the Petitioner was not able to learn about such Notification at the relevant

time. The Apex Court has also kept the issue about the ownership and/or entitlement of the Petitioner to claim the loss or compensation open to be examined by the appropriate Authorities. Learned Advocate General, has also pointed out that the Petitioner has availed of additional FAR by keeping such open space which is otherwise disputed by the learned Counsel appearing for the petitioner. This Court has also noted that the State Government is not claiming any title to the land merely because such beautification activity have been carried out. In such circumstances, the question of seeking review of Order dated 16.12.2014 on the ground that there is an error apparent on the face of record, cannot be accepted. The High Court in exercise of its powers of review, cannot re-open the case and re-hear the entire matter. The Apex Court in the Judgment reported in **(2014) 7 SCC 663** in the case of ***Usha Bharti v. State of U.P.***, has observed at paras 68 to 70 thus :

“68. We have no hesitation in accepting the submission of Mr Bhushan that the High Court or this Court, in exercise of its powers of review can reopen the case and rehear the entire matter. But we must hasten to add that whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 CPC as well as the rules framed by the High Courts and this Court. The limits within which the courts can exercise the powers of review have been well settled in a catena of judgments. All the judgments have in fact been considered¹ by the High Court in pp. 16 to 23. The High Court has also considered the judgment in *S. Nagaraj v. State of Karnataka*, which reiterates the principle that: (SCC p.

619, para 19)

“19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice.”

69. These principles are far too well entrenched in the Indian jurisprudence, to warrant reiteration. However, for the sake of completion, we may notice that Mr Bhushan had relied upon *Board of Control for Cricket in India v. Netaji Cricket Club* and *Green View Tea & Industries*. It would be useful to reiterate the following excerpts:

69.1. In *Board of Control for Cricket in India*, it was observed that: (SCC p. 765, para 90)

“90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words ‘sufficient reason’ in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An

application for review may be necessitated by way of invoking the doctrine '*actus curiae neminem gravabit*'.

.69.2. This Court in *Green View Tea & Industries* reiterated the view adopted by it in *S. Nagaraj*. Therefore, the ratio of *Green View Tea* is not applicable in this case.

70. In view of the observations made in the aforesaid judgments, this Court would not be justified in holding that the High Court has erred in law in not reviewing its earlier judgment.

10. Taking note of the said observations, we find that there is no error apparent on the face of record which would call for the review of the Order passed by this Court disposing of the Writ Petition. The grievance of the petitioner that the land be acquired was also raised in the earlier writ petition which was disposed of. The Judgments relied upon by Shri Pai, learned Counsel appearing for the Petitioners, on facts are not applicable to the facts of the present case.

11. Hence, we find no merit in the above Review Petition and, as such stands rejected.

K. L. WADANE, J.

F. M. REIS, J.

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