

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

**REVIEW PETITION NO. 9 OF 2015
WITH
NOTICE OF MOTION (L) NO. 748 OF 2014
IN
WRIT PETITION NO. 2399 OF 2013**

Shri. Ramesh Kumar Wadhwa ... Petitioner
V/s.
Municipal Corporation of Gr. Mumbai & Ors. ... Respondents

Mr. Sandesh Shukla i/b Abhay Nevagi & co. for the Petitioner.
Mr. A.Y. Sakhare, Sr. Counsel with Ms. K. H. Mastekar for the
respondent nos. 1 and 2/Corporation.
Mr. K. K. Holambepatil for respondent no.3.
Mr. Amit Shastri, AGP for respondent no.4.

CORAM : K. K. TATED, J.
DATED : 05/02/2015.

PC.:

. Heard learned Counsel for the parties.

2 This Review Petition is preferred by original Petitioner for reviewing order dated 21.02.2014 passed by this Court in Writ Petition no. 2399 of 2013.

3 A few facts of the matter are as under:

i) The respondent corporation issued notice under Section 351 of M.M.C. Act dated 27.05.2013 calling upon review petitioner to

remove the unauthorised construction. Pursuant to the said notice, the Review petitioner replied the same. Thereafter, the respondent corporation passed order dated 10.08.2013 holding that Review Petitioner failed to place on record any document to show that the construction is authorised, carried out by obtaining appropriate permission from the Corporation. Hence, the petitioner initially filed Writ Petition no. 2399 of 2013 challenging the notice dated 27.05.2013 under Section 351 of M.M.C. Act and order dated 10.08.2013 passed by the Corporation. That Writ Petition was withdrawn by the Petitioner with liberty to file appropriate application to the respondent corporation within four weeks for regularisation of the suit structure.

ii) Thereafter, petitioner preferred Notice of Motion for extension of time, the same was granted.

iii) Thereafter, the petitioner preferred Writ Petition (L) No. 1136 of 2014. In that Petition, the Petitioner has made following prayers:

“(a)to issue a writ of certiorary or a writ in the nature of certiorary or any appropriate writ, order or direction under Article 226 of the Constitution of India, calling for the records and proceedings pertaining to the passing of the Impugned Order as well as issuance of the Impugned Notice and Impugned Letter and after examining the validity, legality and propriety thereof to quash and set aside the same;

(b) The Petitioner further submits that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India viz.:

- *Quashing and setting aside the Impugned Order dated 10.08.2013;*
 - *Directing Respondents to forthwith cancel and/or withdraw the Impugned Notice dated 27.05.2013;*
 - *Directing Respondents to forthwith cancel and/or withdraw the Impugned Letter dated 01.04.2014;*
 - *Restraining Respondents by an Order and Injunction of this Hon'ble Court from in any manner taking any steps whatsoever on the basis the Impugned Notice, Impugned Order and/or Impugned Letter;*
- c) Pending the hearing and final disposal of the Petition, the Hon'ble Court be pleased to restrain Respondents from in any manner taking any further steps (coercive or otherwise) whatsoever pursuant to the Impugned Order dated 10.08.2013, the Impugned Notice dated 27.05.2013 and/or the Impugned Letter dated 01.04.2014;*
- d) Interim and ad-interim reliefs in terms of prayer clause (c) above;*
- e) costs of this Petition be provided for;*
- f) and to grant such other and further relief as the nature and circumstances of the case may require.”*

iv) That Petition was rejected by this Court (Coram: N.M. Jamdar, J.) on 28.04.2014 on merits.

v) Thereafter, the petitioner preferred present Review Petition for reviving the order dated 28.04.2014 passed by this Court.

4 The learned counsel Mr. Sandesh Shukla appearing on behalf of

the Review Petitioner submits that though the Writ Petition is withdrawn by them with liberty to file appropriate application for regularisation of the suit structure, the present Review Petition is maintainable. He submits that in view of subsequent development that society is not ready and willing to give no objection, it is impossible for review petitioner to make appropriate application for regularisation of the suit structure. He submits that unless and until the society grant no objection, respondent corporation is not ready and willing to accept their application for regularisation of the suit structure. Hence, he has preferred the Review Petition. In support of his contention, the learned counsel for the review petitioner relied on the Judgment of the Apex Court in the matter of *Kamlesh Varma v/s. Mayawati & Ors. reported in AIR 2013 SC 3301* and particularly on paragraph 16. He submits that in view of subsequent development and the Apex Court judgment in the matter Kamlesh Varma (Supra), the Review Petition may be allowed on its own merits.

5 On the other hand, the learned Senior Counsel Mr. A.Y. Sakhare, appearing on behalf of respondent corporation vehemently opposed the present Review Petition. He submits that earlier Writ Petition no. 2399 of 2015 was withdrawn by the Review Petitioner with liberty to file

appropriate application for regularisation of the suit structure. He further submits that thereafter, the petitioner filed another Writ Petition (L) No. 1136 of 2014 for same cause of action. That was dismissed by this Court by order dated 28.04.2014 on merits. He submits that in paragraph 5 of the said order, this Court categorically held that it is duty of the Review Petitioner to take appropriate measure against Co.op. society if, they are not ready to give no objection. He submits that in view of this fact, Review Petition is not maintainable.

6 In similar way, the learned counsel Mr. Holambepatil for the respondent no.3 and learned counsel Mr. Amit Shatri for respondent no.4 also vehemently opposed the present Review Petition. The learned counsel Mr. Holambepatil for the respondent no.3 submits that once Writ Petition is withdrawn, then Review Petition is not maintainable. In support of his contention, he relied on the judgment of the Apex Court in the matter of *Green View Tea & Industries V/s. Collector, Golaghat, reported in 2002(1) S.C.C. 109.*

7 I heard both the sides at length. Admittedly, in the present proceeding, initially the petitioner withdrawn the Writ Petition no. 2399 of 2013. Thereafter, for similar reliefs, he has preferred Writ

Petition (L) No. 1136 of 2014 and same was decided on its own merits. This Court by order dated 28.04.2014 in paragraph 5 specifically observed that it is duty of the petitioner to take appropriate steps against the co.op. society, if they are not ready and willing to grant no objection certificate.

8 Considering this fact and the law declared by the Apex Court in the matter of *Green View Tea & Industries* (Supra), I do not find any substance in the present Review Petition. The entire endeavour is only to reargue the matter.

9 Hence, Review Petition stands rejected.

10 In view of rejection of Review Petition, nothing survives in the Notice of Motion (L) No. 748 of 2014. Hence, same is also rejected.

11 The learned counsel for the petitioner seeks extension of interim protection granted by this Court.

12 On the other hand, the learned Senior counsel for the respondent corporation as well as respondent nos. 3 and 4 also vehemently

opposed for extension of the interim protection.

13 Considering the fact that the liberty was granted to the petitioner to move appropriate application with respondent corporation before one year and thereafter, the time was extended, I do not find any substance in the oral request. Hence, oral request is rejected.

(K.K.TATED, J.)