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

REVIEW PETITION (L) No. 98 OF 2014

IN

WRIT PETITION No. 1964 OF 2007

AND

REVIEW PETITION (L) No. 99 OF 2014

IN

WRIT PETITION No. 2151 OF 2009

Save Open Spaces & Ors.

... Petitioners

Vs.

Parasmani Co-Op. HSG Society (Prop.)

and Ors.

... Respondents

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Mr. Shiraz Rustomjee, Senior Counsel and Ms. Prembhari Thakkar i/b  
M/s. Desai Desai Carrimjee & Mulla, for the Petitioners.

Mr. V. Parshurami, for Respondent Nos. 2 & 3.

Mr. D. A. Nalawade, Govt. Pleader, for Respondent No. 4.

Mr. D. D. Madon, Sr. Counsel a/w Vaibhav Joglekar, Ashok Paranjpe,  
Ms. Aparna Wagle, i/b MDP & Partners, for Respondent No. 5.

Mr. M. M. Malvankar, for Respondent No. 6.

Mr. Virag Tulzapurkar, Sr. Counsel a/w Room M. Vasudeo i/b Nilesh  
C. Parmar, for Respondent No. 7

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CORAM : V. M. KANADE, &  
Smt. ANUJA PRABHUDESAI, JJ.

DATE : JANUARY 19, 2015

PC.

1. Delay caused in filing both the review petitions is  
condoned, for the reasons stated in the affidavit in support of the

petitions.

2. Heard the learned senior counsel appearing on behalf of the Review Petitioners and the learned senior Counsel appearing on behalf of Respondent No. 7. A preliminary objection is raised regarding maintainability of the review petitions. It is submitted that review Petitioners are not aggrieved party within the meaning of Order 47, Rule 3 and Section 114 of the Code of Civil Procedure, and therefore, they are not entitled to file review petitions. It is submitted that the parties to the main petitions have settled *inter se* dispute between themselves, and the said settlement does not bind the Review Petitioners. It is submitted that Review Petitioners would have an independent right of seeking any declaration or any appropriate, writ, order or direction against the MHADA, the State of Maharashtra and the Respondents herein. Reliance is placed on the following judgments in the case of –

- (i) *Gopanbandhu Biswal, Appellant Vs. Krishna Chandra Mohanty & Ors, Respondents [AIR 1998 Supreme Court, 1872];*
- (ii) *Pujya Sindhi Panchayat, Petitioner Vs. Prof. C. L. Mishra & Ors., Respondents [AIR 2002 Rajasthan 274];*
- (iii) *Shapoorji Data Processing Ltd., Petitioners Vs. Ameer Trading Corporation Ltd., Respondents [AIR 2003 Bombay 228] (judgment of the learned Single*

Judge of this Court).

It is submitted that review petitions are, therefore, liable to be dismissed.

3. On the other hand, learned counsel appearing on behalf of the Review Petitioners has submitted that Petitioners are certainly aggrieved by the Minutes of Order, which are filed by the Respondents herein. It is submitted that plot in question is a recreation space, available to all the residents and the Respondents by the said consent terms have permitted one of the Respondents to have right of development over the said plot. Our attention is invited to the lay-out plan and other relevant documents in support of the said submissions. It is submitted that Review Petitioners are aggrieved by the Minutes of Order, which are filed in the writ petitions. Reliance is placed on the following judgments, in the case of –

- (i) *Shivdeo Singh and Ors., Appellants Vs. State of Punjab & Ors., Respondents [AIR 1963 SC 1909];*
- (ii) *Numaligarh Refinery Ltd. & Ors., Appellants Vs. Assam Board of Revenue & Ors. [AIR 2003 GAU. 119], (judgment of the learned Single Judge of the Gauhati High Court).*

The learned senior counsel appearing for the Respondent No. 7 has tried to distinguish the judgments, on which reliance is placed by the learned senior counsel appearing for the Petitioners, in support of the preliminary objection.

4. In our view, Review Petitioners cannot be said to be directly aggrieved by the consent terms, which are filed *inter se* between the Respondents. In the said consent terms, State of Maharashtra and MCGM have been deleted and they have not affirmed the Minutes of Order. The MHADA authorities have signed Minutes of Order only for the purpose of identification and not for other purpose.

5. The settlement, therefore, was *inter se* between the parties and thereby the dispute between the Parasmani Co-Op. Housing Society and the Respondents was settled by virtue of the Minutes of Order. The Review Petitioners, under the circumstances, in our view, cannot be said to be the aggrieved persons. Since the settlement is not binding on Review Petitioners, they have an independent right of filing a petition or to take out any other appropriate proceeding for enforcement of their rights. Hence, in our view, there is some substance in the submissions made by the learned senior counsel appearing for the Respondent No. 7. We are of the view that Review Petitioners are not aggrieved party within the meaning of Section 114 and Order 47, Rule 3 of the Civil Procedure Code, and therefore, they are not entitled to challenge the Minutes of Order, which are filed by the Respondents. It is further clarified that Review Petitioners are entitled to enforce their rights by taking out appropriate proceedings. All the contentions raised by both the parties in both the review petitions are kept open. It is further clarified that Review Petitioners are not bound by the Minutes of Order, filed by the

Respondents in the petitions. The issue whether plot is an open plot or can be developed or not is also not decided by the Minutes of Order. The said issue will have to be decided by the Corporation or MHADA, in accordance with law Both the review petitions are accordingly disposed of in the aforesaid terms.

6. At this stage, learned senior counsel appearing for the Review Petitioners seeks continuation of the interim relief granted by the vacation Court. This is opposed by the learned counsel appearing on behalf of the Respondent No. 5 and 7. It is submitted that the Review Petitioners were aware of the proceedings which were pending in this Court and even before pendency of the petitions which were filed by the Respondents, the Review Petitioners were aware of the barricades, which were put up on the plot. He submitted that thereafter i.e. much after consent terms were filed, present review petitions have been filed. Therefore, no case is made out for continuation of continuation of the interim order. We are satisfied that review petitions are filed after more than two weeks after the period of limitation. Hence, Review Petitioners are not entitled for continuation of the interim order. Interim order is, therefore, vacated.

. Parties to act on authenticated copy of this order.

[ Smt. ANUJA PRABHUDESAI, J.]

[V. M. KANADE, J.]