

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No. 17 of 2016**

1. Smt. Harbans Kaur, wife of late Malak Singh, R/o House No. 531, Road No.4, Smriti Nagar, Bhilai, District Durg.
2. Gurjeet Singh, S/o Satnam Singh, R/o Indira Market, near Power House, Railway Station Power House, Bhilai, District Durg (C.G.)

... Petitioners**Versus**

1. Commissioner, Municipal Corporation, Bhilai, District Durg (C.G.)
2. Collector, District Durg (C.G.)
3. Superintendent of Police, District Durg.
4. Station House Officer, Police Station Chhavni, Bhilai, District Durg.
5. Bhilai Matadoor Union, Bhilai, District Durg, through its President Shri Raj Kumar Jayaswal, S/o Ramdeen Jayaswal, care of Jayaswal Furnitures, 90-C, Industrial Estate, Bhilai, District Durg.
6. State of Chhattisgarh, through Secretary, Urban Administration and Development Department, Mantralaya, Mahanadi Bhawan, Naya Raipur (CG).
7. Alok Kumar S/o Jagdish Kumar R/o Choubey Colony, Raipur (CG).

---- Respondents

Application for review of the order dated 21.01.2016 passed in
WP No.439 of 2001.

(By Circulation in Chamber)
Order

10/03/2016

1. The matter is considered in chamber under the provisions of Rule 90(2) of the High Court of Chhattisgarh Rules, 2007.
2. The instant review petition has been filed seeking review of the order

dated 21.01.2016 passed by this court in Writ Petition No.439 of 2001 whereby this court had dismissed the writ petition holding it to be devoid of merit as also not maintainable.

3. The petitioners through the writ petition though had not challenged any particular order of the State Government or for that matter the Municipal Corporation, Bhilai, but seeking for the following reliefs:

“(i) This Hon'ble Court may kindly be pleased to direct respondents No. 1 to 5 to place on record all files, records, documents relating to the representation made by the petitioners/reports lodged by the petitioners for its kind perusal.

(ii) This Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus commanding respondents no. 1 to 4 to take appropriate action against respondent No.5 and its members and other responsible persons on the representations and complaints of the petitioners, in accordance with law.

(iii) This Hon'ble Court further be pleased to issue command to the Station House Officer, Police Station Chhavni to register offence on the report lodged by the petitioner against the guilty persons.

(iv) This Hon'ble Court may kindly be pleased to restrain respondent No.5 and its members from using the plots of the petitioners as motor stand and also to restrain them from interfering with petitioners possession over the lease/plots in possession of petitioners by virtue of lease granted to them by the Corporation.

(v) Any other relief/reliefs which the Hon'ble Court may deem fit and proper in the interest of justice.”

4. The brief facts of the case is that the Respondent No.1-Municipal Corporation, Bhilai executed a lease deed in favour of the petitioner on 16.02.2000 validity of which was initially for a period of 30 years. According to the Petitioners though there was a specific lease deed in

their favour, but because of the high handedness on the part of the respondent No.-5, the Petitioners were not been able to have peaceful possession over the leased property and they were being restrained by the respondent No.5 and other anti social elements from making any sort of construction or development works on the said property and for which they had filed a writ petition seeking for action against the office bearers of respondent No.5 as well as for a direction for appropriate steps to be taken by the authorities of the State Government on the repeated complaints being filed by the petitioners.

5. This court, after considering the merits of the case and upon hearing the counsel for the respective parties, vide order dated 21.01.2016 held that from the pleadings in the writ petition admittedly there were disputed questions of facts to be adjudicated upon before the reliefs sought for by the Petitioners could be granted. Likewise, it was also found that the nature of dispute raised by the petitioners was purely contractual dispute and the relief sought was for the enforcement of contractual obligations and rights which would normally not fall within the ambit of extraordinary powers conferred upon the writ court under Article 226 of the Constitution of India. It was also found by this court that the dispute regarding the title and possession of the property cannot be resolved invoking the writ jurisdiction of the Court.
6. Now the present review petition has been preferred by the petitioners seeking a relief among other on the following grounds:
 1. The earmarking of the disputed land in the master plan as Matador stand is factually incorrect.
 2. The proceedings drawn for cancellation of the lease deed granted

in favour of the petitioners stood rejected and finally decided on 13.09.2013 in favour of the petitioners.

3. The portion of disputed land being showed as Tar Road again is incorrect, false and wrong finding by the court.
7. So far as the grounds raised by the petitioners, a perusal of review petition by itself would clearly indicate that the review petition has been filed on basis of facts which were either not pleading or is based on subsequent development which was taken place after filing of the writ petition but has not been brought to the notice of the court during the course of final hearing of the writ petition and as such are new facts and grounds. Subsequent filing/pleading of any new facts would not give rise for filing of a review petition so as to recall the order passed on merits and to pass a fresh order after re-hearing the matter.
8. Likewise, even otherwise, the contention put-fourth by the petitioners stating that the findings arrived at by this court being incorrect again is a fact which cannot be rectified in exercise of review jurisdiction. The same can only be looked into by the appellate court exercising the appellate jurisdiction.
9. Similarly, the grounds raised by the petitioners again are all disputed questions of fact which would again require appreciation of evidence both oral and documentary which would not be permissible under review jurisdiction.
10. The review petitioners, by way of review application, are trying for re-hearing of the entire matter. It is well settled law that fresh materials and plea cannot be permitted to be raised by way of review jurisdiction. Moreover, a perusal of order passed in writ petition would reflect that it has

been passed with due appreciation and consideration of facts by the parties and as such it cannot be said that there was any error apparent on the face of record. Review jurisdiction is not an Appeal in disguise. It does not permit re-hearing of matter on merits.

11. Re-appreciation of the facts of the case on the basis of fresh materials which were not there along with the writ petition and passing of fresh order by exercising the review jurisdiction is not permissible under law. It is well settled principles of law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review. The jurisdiction under review does not permit an erroneous decision to be reheard and corrected. The mistake apparent on record means that the mistake which is self evident, needs no search and satres at its face.

12. Principle of law to entertain review petition is well settled in catena of decisions one of latest is 2012(7)SCC 200 (Haryana State Industrial Development Corporation Limited vs. Mawasi and Others). Similar view has also been taken by the Supreme Court in cases of *Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhary*¹, *Lily Thomas, etc. vs. Union of India and others*², *Ajit Kumar Rath vs. State of Orissa and others*³, *Government of T.N. and others vs. M. Ananchu Asari and others*⁴ and *Kerla State Electricity Board vs. Hitech Electrothermics & Hydropower Ltd.*

1 AIR 1995 SC 455

2 AIR 2000 SC 1650

3 AIR 2000 SC 85

4 2005 (2) SCC 332

*and others*⁵.

13. Thus, applying the above well settled principles of law to the facts of the present case, there is no ground available for review of the order dated 21.01.2016. Under the garb of the review petition, the petitioners seek an opportunity to argue the entire case afresh which would amount to converting the review petition into an appeal and the same is not sustainable in law.

14. As a result and in view of the foregoing, this review application is dismissed. No order as to costs.

Sd/-
(P.Sam Koshy)
JUDGE

inder

⁵ 2005 (6) SCC 651