

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 17 OF 2016.

IN

PIL WRIT PETITION NO. 15 OF 2014.

- 1 SHRI ASHOK SHIRSAT,
Indian national, Shop No.G
in survey No. 379/1
of Serula Comunidade,
Dr. B. Borkar Road,
Bardez-Goa.
- 2 SHRI SUSHANT P. NARVEKAR,
Indian National, Shop No. H
in survey No. 379/1
of Serula Comunidade,
resident of Chogm Road, Porvorim,
Bardez-Goa.
- 3 SHRI BOSCO SEVERINO DO
ROSARIO VAZ,
Indian National, shop No. B in
Survey No. 379/1 of Serula
Comunidade, resident of Socorro,
Maina, P.O. Porvorim, Bardez-Goa. ... APPLICANTS

VERSUS

- 1) TRAJANO D'MELLO,
of major age,
Indian National, resident of House
No. 186/B-4, Peddem, Mapusa,

- Bardez, Goa.
- 2) PETER VINCENT ALFONSO,
of major age, Indian
National, resident of
House No. 418/1, Sangolda
Morod, Bardez-Goa.
 - 3) STATE OF GOA, through its Chief
Secretary, having Office at
Secretariat,
Alto Porvorim-Goa.
 - 4) COMUNIDADE OF SERULA,
through its Attorney,
having its Office at West
Coast Residency 1st floor,
Opposite Bank of India,
Porvorum, Bardez-Goa.
 - 5) ADMINISTRATOR OF
COMUNIDADES,
North Zone, Opposite Mapusa
Civil Court, Mapusa, Bardez,
Goa.
 - 6) SHRI DILIP PARULEKAR,
major of age, Hon'ble Minister for
Tourism, State of Goa, with Office at
Secretariat, Porvorim, Goa.
 - 7) SHRI PRAMOD D. PARULEKAR alias

DABOLKAR, of major age, resident of
House No. 710, Saligao, Bardez-Goa.

- 8) SHRI LUIS ANTONIO FERNANDES,
Shop No. G in Survey No. 379/1 of
Serula Comunidade, resident of
Vaddem, Socorro, Bardez- Goa.
- 9) SHRI MARIANO STEPHEN DO
ROSARIO VAZA, Shop No. A in
Survey No. 379/1 of Serula
Comunidade, resident of Socorro,
Maina, P.O. Porvorim, Bardez- Goa.
- 10) SHRI DAYANAND HARMALKAR,
major age, Indian National, Shop
No.D in Survey No. 379/1 of Serula
Comunidade, resident of
Muddavaddo,
Saligao, Bardez- Goa.
- 11) SHRI MANOJ L. CHANDELKAR,
Shop No.E in Survey No. 379/1 of
Serula Comunidade, resident of
Sangolda Road, Near Water Tank,
Alto Porvorim, Bardez- Goa.
- 12) SHRI STANLEY VAZ,
Shop No.I in Survey No. 379/1 of
Serula Comunidade, resident of
Socorro, Maina, Bardez-Goa.

13) SHRI DIGAMBAR KORGAONKAR,
of major age, Indian
National, resident of Verem, Bardez-
Goa.

14) NORTH GOA PLANNING AND
DEVELOPMENT AUTHORITY, Panaji-
Goa.

15) VILLAGE PANCHAYAT OF SOCORRO,
through its Secretary, having Office
at Socorro, P.O. Porvorim, Bardez-
Goa.

..... RESPONDENTS.

Mr. S.S. Kantak, Senior Advocate with Mr. Shivan Dessai, Advocates
for the applicants.

Mr. Rohit Bras De Sa, Advocate for respondent no.1.

Mr. Y. V. Nadkarni, Advocate for respondent No.4.

Mr. Pravin Faldessai, Additional Government Advocate for
respondent no.5.

Mr. D.J. Pangam, Advocate for respondent no.7.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.
Date:- 23rd June, 2016

ORAL ORDER: (PER F.M.REIS,J)

1. Heard Mr. S.S. Kantak, learned Senior Advocate for the
applicants, Mr. Rohit Bras De Sa, learned Advocate for respondent
no.1, Mr. Y. V. Nadkarni, learned Advocate for respondent No.4, Mr.

Pravin Faldessai, learned Additional Government Advocate for respondent no.5 and Mr. D.J. Pangam, learned Advocate for respondent no.7.

2. The above petition seeks review of the judgment passed by this court dated 06/05/2018 while disposing off PIL WP Nos. 15 of 2014 and 16 of 2014. Shri Kantak, learned Senior Counsel for the applicants has pointed out that the relevant material in connection with the subject plot of the application was not produced on record which resulted in this Court passing the said judgment inter alia holding that the occupation of the applicant is unauthorized. The learned Senior Counsel further submits that the applicants have been duly authorised to occupy the kiosks in the property surveyed under no.376/6 and that as such, the observation of this court in the said judgment that there was no legal grant in favour of the applicants is incorrect. It is further pointed out that as such grant was illegal the property now occupied by the occupant under survey no.379/1 is held to be unauthorized though there was documents which suggest that there was a resolution by the general body of the concerned Comunidade giving authorization to the subject occupant, which was not produced, and as such there is an error apparent on the face of record which calls for review / recall of the judgment. The learned Senior Counsel has extensively taken us

through the documents, which according to him, are very material and it was incumbent upon the circumstances to produce such documents and having failed to do so, this court has passed the said judgment without looking into such documents. The learned Senior Counsel further points out that the reliefs granted by this Court are inter alia directing the Collector /respondent no.1 to take action for unauthorized occupation of the applicants, which according to him, would cause grave prejudice to their rights to defend that the occupation of the applicants is in accordance with law. The learned Senior Counsel further points out that by the said judgment disposing off the PIL writ petition, the defence of the applicants to establish legal occupation would be defeated considering the findings therein. The learned Senior Counsel further points out that even assuming that there is no error in the judgment, in the interest of justice, the matter requires to be reheard, recalling the judgment.

3. On the other hand, Shri De sa, learned Counsel for the original petitioner and Shri Y. V. Nadkarni, learned Counsel for the respondent no.4, who have appeared in pursuance of a private notice served by the applicants, have pointed out that there is no error on the face of record, which would call for interference in the present review petition.

4. Shri De Sa, learned Advocate thereafter has taken us through the Appellate side Rules to point out that the certificate attached to the review petition is not in accordance with the rules and as such, according to him, this would itself is sufficient to reject the Review Petition. The learned counsel further points out that the applicants are not entitled to an opportunity for rehearing of the Petition merely because according to them, some documents were not produced, and as such the review petition be rejected. The learned counsel submits that all the contentions are duly examined by this court and as such there is no error as such, which would call for review of the judgment.

5. Shri Y.V. Nadkarni, learned Counsel for the respondent no.4 has pointed out that the relief directing the Collector and the Village Panchayat to take action are in the context of the finding of this Court that no conversion sanad nor completion certificate was obtained from the concerned authorities as reflected in the findings at para 24 and 25 of the judgment. The learned counsel further points out that the reliefs granted are in the nature of direction to the authorities to proceed in accordance with law. The learned counsel further points out that this Court has also noted that all material is not before the Court to take a conclusive findings in the matter and as such there is a direction to the concerned

respondents to restore the property of the comunidade and as such any material which the applicants desire to rely can always be produce in any such proceedings initiated by such respondents. The learned Counsel has prayed that the review petition can be rejected.

6. We have considered the submissions of the learned counsel and also have gone through the records necessary to examine whether there is any case made out to review the judgment in terms of order 47 rule 1 of C.P.C. The Court while examining a review petition has limited jurisdiction circumscribed by definitive limits fixed by the language used in Order 47 Rule 1 of the Civil Procedure Code. It can allow a review on specified grounds as mentioned therein. The application for review on the ground of discovery of new material should be considered with gross caution and should not be granted very lightly. It is also well settled that a review application cannot be an appeal in disguise and in exercise of review jurisdiction, the Court cannot rehear the matter on merits afresh. In the present case, it is pointed out by Mr. Kantak, learned Senior Advocate that the documents, which according to him, were not produced as the petition as filed did not have any allegation against the applicants. The record however reveal that the applicants had filed their reply alongwith documents attached

therein opposing the petition filed by the petitioner. In such circumstances, merely because some documents which the applicants now feel would be relevant to dispose of the petition were not filed cannot be a ground for rehearing of a disposed petition as no due diligence has been established by the applicants.

7. In this context, the Apex Court while dealing with a review petition filed based on additional document and photographs in "**N. Anantha Reddy v. Anshu Kathuria**"[(2013) 15 SCC 534] has observed as under :

"6. A careful look at the impugned order would show that the High Court had a fresh look at the question whether the appellant could be impleaded in the suit filed by Respondent 1 and, in the light of the view which it took, it recalled its earlier order dated 8-6-2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order dated 8-6-2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self-evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits."

8. Taking note of the said observations of the Apex Court, we find that there is no error apparent on the face of record which

would call for interference in the present review petition.

9. On perusal of the relief granted by the Judgment in the present case while disposing the PIL writ petition, it appears that the directions issued to the authorities are to act in accordance with law. In such circumstances, it cannot be said that any legal defences available to the applicants, in case such actions are not in accordance with law by such authorities, are foreclosed. Hence, we find that there is no error apparent on the face of record nor any other jurisdictional error as contended by Mr. Kantak, learned Senior Counsel appearing for the applicants. There is no reason to recall or review the judgment passed by this Court. As such, there is no merit in the above petition which stands accordingly rejected.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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