

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

REVIEW PETITION NO. 35 OF 2016

IN

WRIT PETITION NO. 1430 OF 2014

Mahabir Nuniwal	}	Petitioner
versus		
Mumbai Housing and	}	
Development Board and Ors.	}	Respondents

Mr. Jawahar Narang with Mr. Prashant
for the Petitioner.

Mr. Pravin Samdani - Senior Advocate
with Mr. Bhojraj Baral and Mr. Kalpesh
Joshi for respondent nos. 3, 4, 5 and 7.

Mr. Ashok Dhanuka for respondent nos. 6
and 8.

Mr. Rajesh Gehani with Mr. Mahendra
Agavekar and Mr. Sujal Vikhare for
respondent no. 9.

Mr. Harsh Behany i/b. M/s. Maniar
Srivastava Associates for respondent
no.10.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- SEPTEMBER 27, 2016

P.C. :- (In Chamber)

The petitioner seeks review of the order passed by us on
24th June, 2015 in Writ Petition No. 1430 of 2014. The
contention of the learned counsel Mr. Narang appearing in
support of this review petition is that the order passed by the
Division Bench was challenged before the Hon'ble Supreme Court
of India. The record and proceedings and the order passed in that

Special Leave Petition would demonstrate as to how the Hon'ble Supreme Court of India noted the stand of the petitioner that the documents relied upon before the Hon'ble Supreme Court of India were not considered by this court in the order under review. The reliance placed on a letter of MHADA and the other documents having not been considered by this court, the Hon'ble Supreme Court of India, instead of entertaining the petition further, granted liberty to the petitioner to seek a review of our order.

2) He relies upon the order of the Hon'ble Supreme Court of India to submit that this review petition is maintainable. The review petition only brings to this court's notice that certain documents, which were very germane and relevant for the purpose of a decision in the writ petition, which was essentially directed against the MHADA, having been omitted from consideration by this court, the order under review should be set aside. The writ petition should be heard afresh and the court should call for an explanation from the MHADA on affidavit and thereafter deal with the writ petition in accordance with law.

3) We have perused the order passed by the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India merely refers to the submissions of the learned senior counsel appearing for the petitioner and during the course of such submissions, he relies

upon certain documents. He refers to these documents to contend that the reliance placed on letter dated 19th January, 2012 of MHADA, the High Court, in the absence of required consideration of a specific stand of MHADA, could not have rejected the petitioner's claim. Beyond noting these submissions and observing that it does not find any reference to any of the above documents brought to its notice, the Hon'ble Supreme Court granted liberty to the petitioner to move this court by way of a review petition. Thereafter, it is observed that it will be open for this court to consider any submission in that review petition and pass appropriate orders.

4) A detailed order was passed on 24th June, 2015 by this court and all the submissions of the petitioner's counsel then appearing have been duly noted. Equally, the submissions in opposition of the contesting respondents' counsel have been recorded extensively.

5) Thereafter, this court perused the entire paper book and which was running into voluminous pages. This court expressed an opinion by taking into consideration what it thought were the most crucial and relevant documents, based on which the entire petition can be disposed of. The view taken by this court may be erroneous, according to the petitioner. However, every erroneous

order cannot be set aside in review. The parameters of review jurisdiction are defined and too well settled to require any reiteration. In the garb of a review, this court cannot convert itself into an appellate court and arrive at a different conclusion. This court cannot go behind the order under review and undertake such an elaborate exercise as is now requested by the learned counsel appearing for the review petitioner. The argument of the learned counsel proceeds on the footing that if the documents termed by the petitioner as relevant, germane and crucial to the issue had been before this court and were duly considered, possibly, the court would have reached a different conclusion. Precisely, this is an exercise which is impermissible in review jurisdiction. In the garb of entertaining it, we cannot go behind our orders and re-open the concluded issues. We cannot, then, rely upon the same record or additional documents and arrive at a different conclusion as if we are sitting in appeal or exercising revisional jurisdiction.

6) The written submissions tendered by the petitioner's advocate all the more indicate as to how the elaborate factual matrix and in the backdrop of the above documents has not been properly appreciated by this court. Hence, this court is obliged to review its order is the request.

7) In our opinion, the review jurisdiction is only to enable the court to correct errors apparent on the face of the record. In the event the court feels that in the interest of justice the order must be reviewed, then, even that exercise may not enable the court to go behind the order under review and to the extent indicated above. There is no pleading in the review petition that the documents which have been brought to the notice of the Hon'ble Supreme Court of India were unavailable or despite due and diligent search could not be produced when the order under review was passed. Meaning thereby, the said documents were not available and for reasons beyond the control of the petitioner at the time of arguing the writ petition.

8) All the more we cannot interfere in review jurisdiction when Mr. Samdani learned senior counsel appearing for the respondents submitted before us that it is not as if these documents, which were forming part of the record of the writ petition, were not available or could not be produced. They were very much part of the voluminous record. The counsel then appearing for the petitioner thought otherwise and did not rely upon them to support the eventual claim or the relief sought by the petitioner in the writ petition. If that is the mode chosen by the counsel and the manner in which the petition was argued was

not satisfactory, according to the petitioner and emphasis should have been placed on these documents at the time of arguing the writ petition, then, that is not something which will enable us to review our own order. We do not think that Mr. Samdani's submissions can be brushed aside so easily as is now attempted. Having not attempted to argue the matter in a particular way as is now projected, we do not think that in review jurisdiction we can allow the petitioner a fresh opportunity and as desired. This is one more reason why we are reluctant to entertain the review petition.

9) Lastly, we do not deem it fit and proper to interfere in our review jurisdiction with the direction to pay costs. We have commented about the petitioner's conduct in paras 7 and 8 of our order. Once we have justified the imposition of costs in the backdrop of the conduct of the petitioner and as highlighted, then, we do not think that we can recall that direction.

10) In the circumstances, we do not think that we can assist the petitioner in review jurisdiction. The review petition is devoid of merits and it is dismissed. No costs.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)