

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Misc. Civil Application No.1059/2016 (For Review) in
Writ Petition No.5056/2016 (D)

Ataur Rehman Khan s/o Zulfiquar Khan & ors vs. The State of Maharashtra thr.
Principal Secretary, Urban Development Department, Mantralaya, Mumbai & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. V. Samarth, Advocate for applicants-petitioners.
Mrs. Bharti Dangre, G..P for non applicant-respondent nos.1 and 2.
Mr. J. B. Kasat, Advocate for non applicant-Municipal Corporation.

CORAM : B. R. GAVAI & V. M. DESHPANDE, JJ.

DATE : OCTOBER 27, 2016

Heard.

The learned counsel for the applicants-petitioners has
moved this Court for review of the order on the following
grounds:

(i) In paragraph 8 of the order in the fourth line,
year “1972” has been erroneously mentioned and it ought
to have been “1792”.

(ii) In paragraph nos.30-C to 30-G, though a specific
argument was advanced on behalf of the petitioners that
regulation no.3.1 of the Heritage Regulations requires a
notification for deletion, the said arguments and it has not
been considered by this Court.

Insofar as the first ground is concerned, we find that
there is a typographical mistake. It appears that the
stenographer has interchanged “7” and “9”. In that view of the
matter, the prayer insofar as changing of the year “1972” to
“1792”, is allowed.

Insofar as the second ground is concerned, on the basis of the factual material placed before us, we have come to the conclusion that it is only the Tomb (Samadhi) and Gujargate, which are having the status of heritage structure. We have also come to a considered conclusion that rest of the building including the shops, etc. do not enjoy the heritage status. In view of this factual finding, since no structure which, in our view enjoys the heritage status, is being affected by the proposed expansion, there was no occasion to consider the legal submissions as advanced by the learned counsel for the applicants-petitioners. It is the settled position of law that the Court should avoid in going into the academic questions unless the facts warrant so.

In that view of the matter, the review application, insofar as the second ground is concerned, in our considered opinion, is without any substance. Hence, except what is allowed herein, rest of the review application stands rejected. No order as to costs.

JUDGE

JUDGE