IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

941 REVIEW APPLICATION (CIVIL) NO. 209 OF 2016
IN WP/6602/2014

BALKRISHNA DHONDIRAJ MAYUR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Shri. R.F. Totla, Advocate, for applicant.

Shri. S.B. Joshi, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. P.R. Katneshwarkar, Advocate, for respondent Nos.3 and 4.

Coram: T.V. NALAWADE, J.

Date: 15 March 2017

ORDER:

1) Heard learned counsel for both the sides.

2) The application is filed for review of the order made by this Court in Writ Petition No.6602 of 2014 on 2-9-2016. The petition was filed to challenge the order made by the District Court on delay condonation application. Present applicant, petitioner, wanted to file appeal in

District Court against the decision of the trial Court but the delay condonation application was rejected by District Court and so the said decision was challenged in Writ Petition No.6602 of 2014. After hearing both sides, this Court dismissed the petition. This Court has observed that nothing can be achieved by setting aside the order made by the District Court of rejection of the delay condonation application. For making such observations this Court has touched some merits and this Court had observed that there is virtually no case with the petitioner to argue main matter on merits.

3) Learned counsel for the applicant today submitted that there was some mistake committed by the learned counsel of the applicant in making submission that there was oral gift of the disputed property to Guru Paduka made in the year 1956 when there was no gift but it was religious endowment created at the relevant time by the owner. The learned counsel submitted that when there is such endowment from a Hindu, there was no need of creation of any document and the provisions of the Transfer of Property Act also do not apply. He placed

reliance on observations made by the Apex Court and various High Courts in the following cases :

(1) **A.I.R. 1930 Patna 610 (Harihar Prasad v. Siri Gurugranth Saheb);**

(2) **(2006) 200 CTR All 35 (The Commissioner of Income Tax v. Dr. (Miss) Chandra Kanta Rohatgi);**

(3) **A.I.R. 1957 S.C. 797 (M. Dasaratharami Reddi v. D. Subba Rao);**

(4) **A.I.R. 1927 Madras 636 (Narasimhaswami v. Venkatalingam);**

(5) **AIR 2003 SC 1685 (Kuldip Chand v. Advocate General to Government of H.P.).**

4) The submission made by the learned counsel for the applicant cannot be accepted at least in the review application. Further, the matter of mutation was separately taken to the appellate authority and the mutation itself is set aside by the appellate revenue authority. A writ petition is pending against that decision given by the said appellate authority. The submissions made do not show that there is anything with the petitioner to show that there was some religious endowment made by Sundarlal, original owner and he was relying only on the basis of so called mutation made in

favour of Guru Paduka. This Court holds that the point raised is not within the scope of the review. This Court is expressing that the provisions of the Transfer of Property Act and Maharashtra Land Revenue Code need to be applied when learned counsel for the review applicant submitted that Clauses 403 and 404 of the Hindu Law by Mulla (21 Edition) need to be used in respect of religious endowment. There is no special enactment for religious endowments like in State of Himachal Pradesh. Further, the mutation does not show that owner had given application and it shows that enquiry was expected. In the result, the application stands rejected.

Sd/-
(T.V. NALAWADE, J.)

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