

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1708 OF 2017
IN
FIRST APPEAL NO.1347 OF 2016**

Abdul Hamid Halim (Since deceased)

Through his legal heirs & Ors.

...Applicants

vs.

The Tahasildar (Enc.) Andheri-1 And Ors.

...Respondents

**WITH
CIVIL APPLICATION NO.2619 OF 2017
IN
FIRST APPEAL NO.1347 OF 2016**

Smt. Shabana Mofid Ahmed Shaikh

...Applicant

vs.

Indira Nagar Welfare Association

...Respondent

....

Mr. V.S. Kapse, a/w. Mr. Rajesh Dharap and Mr. Akshay Sawant, for the Applicants.

Mr. S.S. Redekar, i/b. Kailash R. Tiwari, for the Appellant.

Mr. Yogesh Dabke, AGP, for Respondent Nos.1 and 3.

Mr. N.V. Walawalkar, Senior Advocate, a/w. Mrs. Mamta Bhoir, for Respondent No.2/MCGM.

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CORAM : S.C. GUPTE, J.

DATED : 29 NOVEMBER 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Civil Application seeks modification of an order passed

by this Court. The modification is sought on the ground that the original order was obtained by making a misrepresentation to the Court.

3. The subject matter of controversy concerns a certain plot of land, which, according to the Municipal Corporation of Greater Mumbai, has been reserved for a public cemetery. That was the basis on which the original order was passed. Learned Counsel for the Applicants submits that this plot is not reserved for a public cemetery, as suggested by the Municipal Corporation. Mr. Walawalkar, learned Senior Counsel appearing for the Municipal Corporation, produces a plan as of May 2014, prepared under Section 26 of the Maharashtra Regional Town Planning Act. The plan is taken on record, marked "X" for identification. This is a draft development plan, which is presently pending sanction before the State Government. In view of this plan, the Municipal Corporation is very much within its rights to consider the use of the land under Section 46 of the Maharashtra Regional and Town Planning Act for a public cemetery. Under this provision, the planning authority, whilst considering an application for permission for use of a land, is expected to have due regard to the provisions of any draft or final plan or proposal published by means of notice submitted or sanctioned under this Act. The proposed user of the land as a public cemetery is, thus, within the law. This particular piece of land has been allotted to the Corporation by the State Government, the land being Government land, for a public cemetery under Section 22 of the Maharashtra Land Revenue Act, 1966. Even the allotment of the land to the Municipal Corporation for the stated purpose, in the premises, cannot be said to be *ultra vires* the provisions of law.

4. In the premises, there is no case for modification or review of the order passed by this Court. There is no new or important matter for evidence which, after the exercise of due diligence, was not within the knowledge of the Applicants or could not be produced by them when the order was made and which, accordingly, calls for a review. Learned Counsel for the Applicants cannot point out any mistake or error apparent on the face of the record. There is also no sufficient reason why the order passed deserves to be reviewed.

5. Accordingly, the Civil Application is dismissed. No order as to costs. The interim order passed in the Civil Application stands revoked forthwith. The other pending applications can go before the regular Court.

(S.C. GUPTE, J.)