

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

REVIEW PETITION NO.46 OF 2016
IN
WRIT PETITION NO.2821 OF 2014

M/s. Villayati Ram Mittal Petitioner
Vs.
The High Power Committee & Others Respondents

Mr. Anil Anturkar, Senior Counsel with Mr. Chaitanya Bhandarkar i/by Chaitanya Bhandarkar & Mr. Rahul Singh for the Petitioner.
Mr. Jagdish G. Aradwad (Reddy) for Respondent Nos.1, 2 & 5.
Mr. Arshil A. Shah for Respondent No.3.
Mr. Girish Utangale with Mr. Chetan Mhatre i/by M/s. Utangale & Co. for Respondent No.4.
Mr. Ashish Kamat with Mr. Kunal Mehta i/by Mr. C.N. Gole for Respondent No.7.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

DATE : OCTOBER 06, 2017

P.C:

1. This review petition seeks a review of our order passed on 1-10-2016 in Writ Petition No.2821 of 2014.

2. Mr. Anturkar, learned Senior Counsel appearing on behalf of the review petitioner/original petitioner, would submit that this Court in dismissing the writ petition has proceeded to hold that the Co-operative Housing Society had lost faith in the petitioner and therefore engaged another developer and for that sought the intervention of the Slum Rehabilitation Authority. This is factually incorrect, according to Mr. Anturkar, and we must peruse from the record the Resolution of the Co-operative Housing Society which is allegedly to the contrary. The second submission of Mr. Anturkar is that the High Power Committee may have recorded that the petitioner admitted that there was a unauthorised construction. This Court's order also proceeds on such an admission attributable to the petitioner. Once again, Mr. Anturkar would submit that the written statement of the petitioner before the High Power Committee did not contain any such admission. Therefore, on both counts the order under review suffers from an error apparent on the face of the record.

3. Mr. Anturkar submits that any mistakes apparent on the face of the record is the requirement for a review and

therefore it cannot be restricted to only a mistake or error apparent on the face of the order under review. Hence, we can once again peruse the record of the petition and consider these submissions.

4. We are unable to accept these contentions for more than one reason. The Hon'ble Supreme Court of India outlined the ambit and scope of the review provision and on umpteen occasions it cautioned all Courts that this jurisdiction cannot be equated with an appeal or a revision. In an appeal, the decision of the trial Court on fact and law is open for scrutiny and verification and, therefore, the whole record can be perused. In a revisional jurisdiction also the parameters, though distinct, enable the Court to exercise its powers consistent with the object and purpose of that jurisdiction. In review, however, it is not open to go behind the order to such an extent as to hold a rehearing of the matter on merits. The attempt here is precisely the same. If there was a Resolution of the Co-operative Housing Society which the Slum Rehabilitation Authority or the High Power Committee has misread and which would not express

lack of confidence in the petitioner/developer and this Court in upholding their orders perpetuated a error, then, that is not a mistake or an error which we can be corrected in review jurisdiction. That would enable us to reopen all the factual findings and which have been rendered after a perusal of the record. If at the initial stage the Court has perused the records and taken a particular view of the matter, that view may be erroneous but correction of that view is permissible only by resorting to the appellate remedy. It is not permissible to request the same Court, which has passed the order, to once again reopen the factual conclusions and take another view. That therefore, a course which cannot be adopted by us.

5. Equally, the High Power Committee recorded an admission of the petitioner about the nature of the construction and termed it as unauthorised. It is Mr. Anturkar's submission that the High Power Committee erred in recording such an admission because the written statement of the petitioner before that Committee did not contain any such admission. The Division Bench passing the order under review has endorsed

that finding of the High Power Committee erroneously, according to Mr. Anturkar. These submissions would mean we again take up the factual finding recorded by us, reopen it, reconsider all the materials based on which that finding has been recorded and come to a different conclusion. Once again, such an elaborate exercise entailing a rehearing of the matter is impermissible in our review jurisdiction. Looked at from any angle, we cannot entertain this review petition and it is dismissed. No costs.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)