

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 40 OF 2013
IN
WRIT PETITION NO. 6372 OF 2010

YOGESH KAMALAKAR JAGTAP
VERSUS
CITY AND INDUSTRIAL DEVELOPMENT CORPORATION
THROUGH MANAGING DIRECTOR AND OTHERS

...
Mr. P.S. Dighe, Advocate for applicant
Mr. A.S. Bajaj, Advocate for respondents no. 1 and 2
Mr. A.C. Darandale, Advocate for respondent no.4
...

CORAM : SUNIL P. DESHMUKH &
P.R. BORA, JJ.
DATE : 11-12-2018

ORDER :

1. Heard learned counsel Mr. Dighe appearing for review applicant, Mr. Bajaj, learned counsel for respondents no.1 and 2 and Mr. Darandale, learned counsel for respondent no.4.

2. Review of order dated 25-06-2012 passed by this court in writ petition no. 6372 of 2010, is being sought for. Under said order, division bench of this court (Coram : B.P. Dharmadhikari and Sunil P. Deshmukh, JJ.) had rejected writ petition observing that reliance can not be placed on affidavits and photographs, more credit-worthy material could have been produced to show existence of two separate establishments of father and son

(erroneously, it had been referred to as brothers in the said order).

3. In review application, the applicant seeks to rely on certain documents, which are allowed to be produced vide a separate order passed today by us in civil application no. 13344 of 2018, couple of which are representations by persons, who claim to be in occupation of the premises from where they were being removed. Since the representations contain signatures of both father and son, it is being submitted that, it gives indication of that there were two shops. Further, certain other documents viz. applications to Administrator of City and Industrial Development Corporation also are being referred to, wherein father and son appear to have separately filed applications.

4. Learned counsel for review applicant also purports to refer to *panchanama* which also appears to have been signed by father and son. He, therefore, urges to consider that if there had been single premises, father and son would not have signed the documents concerned. These documents read along with the affidavits and photographs would be forming sufficient material about father and son occupying two different premises. He, therefore, urges to review the impugned order and allow the writ petition.

5. On the other hand, Mr. Bajaj, learned counsel for respondents no.1 and 2 purports to refer and rely on survey which had been carried out on 06-01-2006, wherein according to him, father and son were found to carry on their activities in one premises admeasuring 37.40 sq. mtr. and further purports to state that father and son have already been allowed premises admeasuring 27.00 sq. mtr. pursuant to the scheme. He submits that under review, whole petition is sought to be argued. In the writ petition, the court had found that material had been deficient to support the claim. He submits that in review, the situation cannot be improved on by producing certain material since in the circumstances, it would be a case wherein it can not be said that there had been any error apparent on the face of record while passing the impugned order. He, therefore, requests not to indulge into the request made by review applicant.

6. After hearing learned counsel for parties, the situation emerges that while petitioner proceeded with the claim of having two shops of father and son and respondents did not accept the situation. Documents sought to be relied on in review fall short of specifically depicting two distinct and separate premises being occupied by petitioner and his father. It is a disputed question about facts being raised in the matter. It would much less be gone in review.

7. Review application, therefore, is not being entertained and is dismissed.

8. At this juncture, learned counsel for review applicant purports to point out that one shoplet is still lying vacant and his client is prepared to pay market price for the same and, therefore, CIDCO authorities may consider to allot the same to review applicant.

9. Mr. Bajaj, learned counsel states that pursuant to the scheme, there will have to be auction of property and there can not be any specific private allotment to review applicant without following the procedure.

10. In view of aforesaid, it would be expedient that in case, the shoplet is proposed to be allotted by public auction, the review applicant may participate in the same.

[P. R. BORA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/