

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.5 OF 2018

ALONG WITH

CIVIL APPLICATION NO.177 OF 2018

IN

CIVIL REVISION APPLICATION NO.548 OF 2016

Linker Shelter Pvt. Ltd., Pune

.... Petitioner-Applicant

V/s.

Dudadhari @ Kathada @ Kagzipura

Masjid Trust, Nashik and Ors.

.... Respondents

Mr. Girish Godbole, with Mr. Sagheer A. Khan, I/by M/s. Judicare Law Associates, for the Petitioner-Applicant.

Ms. Pradnya Talekar, a/w. Ms. Madhuri Ayyappan, I/by Talekar and Associates, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH JULY 2018.

P.C. :

1. Heard Mr. Godbole, learned counsel for the Petitioner-Applicant, and Ms. Talekar, learned counsel for the Respondents.

2. This Review Petition is preferred by Original Respondent No.7 contending *inter alia* that, the observations made in paragraph No.38 of the 'Judgment and Order' dated 11th April 2018 passed by this Court are based on erroneous assumption that, the order of the Hon'ble Apex Court

in Special Leave to Appeal (Civil) bearing No.34727 of 2013 dated 13th December 2013, restraining Original Respondent No.7 from transferring possession of the flats to the intending purchasers, was continued till the impugned order was passed by the WAQF Tribunal on 18th June 2016.

3. It is submitted that, the said order of the Hon'ble Apex Court was in existence only till the WAQF Board has decided the application filed under Section 40 of the WAQF Act on 4th February 2016. It is submitted that, from 4th February 2016 till 18th June 2016, when the WAQF Tribunal passed the order, the order of the Hon'ble Apex Court was not continued. Therefore, the observations made by this Court in paragraph No.38 of its 'Judgment and Order', that the said order was continued till the Tribunal has passed the impugned order, are not correct. It is submitted that, as on the basis of the said observations, this Court has, by the above-said 'Judgment and Order' dated 11th April 2018, set aside the order of the WAQF Tribunal to the extent of permitting transfer of possession of the flats to the intending purchasers, there is an error apparent on the face of the record and, therefore, this Court should review its own order.

4. Learned counsel for the Respondents has fairly conceded that, the order passed by the Hon'ble Supreme Court came to an end on 4th February 2016 and it was not extended thereafter.

5. However, as rightly submitted by her, even accepting that there is an error in the observations made by this Court in paragraph No.38 of its 'Judgment and Order', it was not the “material error” in the sense that this Court has not set aside the order of the Tribunal, only on the basis of the observations made in paragraph No.38, that there was order of the Hon'ble Apex Court restraining delivery of possession of the flats, but also on the other counts, as observed in paragraph No.39, as follows :-

“39. This part of the order of the Tribunal, permitting the Developer to transfer possession of the flats to the intending purchasers, is, in my opinion, a matter of serious concern, not only because such order is passed for the first time and without assigning any reasons, but also because it may lead to irreversible position and that too at an interim stage, when rights of the parties are yet to be finalized.”

6. These observations made in paragraph No.39 of the 'Judgment and Order' of this Court clearly go to show that, as the Tribunal has not assigned any reasons also, for its order of permitting Original Respondent No.7-the Developer to transfer the possession of the suit flats, and as such order was bound to lead to irreversible position and that too at an interim stage, when rights of the parties were yet to be finalized, this Court has set aside the said order. Thus, the reasons given

in paragraph No.39 of the 'Judgment and Order' also weighed with this Court, when this Court has set aside the said order of the WAQF Tribunal. Hence, the error, which is pointed out, is not “material” in that sense, so as to vitiate the entire 'Judgment and Order' passed by this Court.

7. There is also much substance in the submission advanced by learned counsel for the Respondents that, the scope of this Review Petition is very limited and unless it is shown that the error, which has crept into the order, has the effect of undermining the soundness of the order and which can result in miscarriage of justice, then only the Review Petition can be entertained, otherwise not.

8. In this respect, learned counsel for the Respondents has relied upon the Judgment of the Hon'ble Apex Court in the case of *Kamlesh Verma Vs. Mayawati and Others*, (2013) 8 SCC 320, wherein, the Apex Court has clearly laid down the parameters for entertaining the Review Petition and one of the parameter, as stated in paragraph No.20.2.(iv) is, “*such material error should be of such a nature, so as to undermine the soundness of the order or results in miscarriage of justice*”.

9. Here in the case, the error, which is pointed out by learned counsel for the Petitioner, neither undermines the soundness of the order, as the

order is passed on other reasons also and, secondly, it does not result into miscarriage of justice also. Admittedly, the order, which was impugned before this Court, was the one passed by the WAQF Tribunal on the application for interim relief filed at 'Exhibit-5'. This Court has, at the time of setting aside the said order, directed the WAQF Tribunal to decide the Appeal as expeditiously as possible and preferably within three months from the receipt of the copy of the order. Therefore, whatever order, which was passed by this Court of setting aside the impugned order of the WAQF Tribunal, to the extent of permitting transfer of possession of the suit flats to the intending purchasers, was only of an interim nature, till the Tribunal decides the Appeal before it, within three months. Hence, such order cannot result into miscarriage of justice, as the said order was purely of an interim nature, to preserve the status-quo of the property, having regard to the complications, which may arise, if the possession of the flats was allowed to be transferred.

10. It is the Petitioner, who has allowed the order passed by this Court to continue by seeking stay to the said order for ten weeks, in order to enable the Petitioner to approach the Hon'ble Supreme Court against the said Order. However, instead of approaching the Hon'ble Supreme Court, the Petitioner has approached this Court and during pendency of this Petition also, on his request, the said order was continued. Otherwise, that order, being purely of an interim nature, only till the Tribunal

decides its Appeal on merits within three months, that order would have come to an end. Hence, there was absolutely no question of any miscarriage of justice because of the said order. In view thereof, on this count also, the Review Petition cannot be entertained and hence, stands dismissed.

11. At this stage, learned counsel for the Petitioner seeks continuation of the interim stay granted by this Court, during pendency of the Review Petition.

12. Learned counsel for the Respondents strongly resists the same and in my considered opinion, rightly so. When already the order passed by this Court was stayed for a period of ten weeks and thereafter, again during pendency of the Review Petition also the same order was stayed, now no reason is made out, again to stay the said order. Hence, the request for stay is rejected.

13. In view of the above, Civil Application No.177 of 2018, pending in Review Petition No.5 of 2018, does not survive and the same is disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]