

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION STAMP NO.13444 OF 2019
IN
WRIT PETITION NO.3331 OF 2019**

Dhanraj S/o Gopinath Gayakwad & Ors. APPLICANTS

VERSUS

Dilip S/o Sakharam Kale & Ors. RESPONDENTS

Mr S. S. Thombre, Advocate for the applicants;
Mr S. D. Kaldate, Advocate for respondent No.1;
Mr K. N. Lokhande, A.G.P. for respondent Nos.2 to 4;

**CORAM : PRASANNA B. VARALE &
 S. M. GAVHANE, JJ.**

DATED : 6th SEPTEMBER, 2019

ORAL ORDER:

Heard Mr Thombre, learned Counsel for the
applicants.

2. By way of present application, the applicants
pray for recall/review of the order dated 6th March, 2019
in Writ Petition No. 3331 of 2019.

3. The limited grievance made in the Writ Petition was that the petitioner had submitted an application for measurement of the land to respondent No.3 - The Deputy Superintendent of Land Record, Kaij, Dist. Beed and though the petitioner is having sufficient documents to show that the father of the petitioner was the owner and possessor of the property and that the petitioner having succession certificate in his favour, the authority was sitting idle over the application and the application was pending before the authority. It was also submitted before this Court that initially some legal proceeding was pending before the Court of Civil Judge Senior Division, Ambajogai and an interim order was passed by the Court. On enquiry, it revealed that neither the property of the petitioner was the subject matter of the proceeding nor he was a party to such proceeding. As such, the petitioner submitted again an application to the authority on 12th December, 2017. As there was no

decision on the application for a considerable length of period, the petitioner approached this Court seeking directions to the authority to decide the application.

4. This Court, by making reference to the above facts found that a limited grievance is raised and thought it fit to dispose of the petition with directions to respondent No.3 to decide the application filed by the petitioner on 12th December, 2017 as early as possible and not later than eight weeks from the date of order, if it is not already decided by the authority.

5. Mr Thombre, learned Counsel appearing for the applicants vehemently submitted that the applicants were the necessary parties in Writ Petition No. 3331 of 2019 and without adding the present applicants as party-respondents in the array of respondents, the petitioner has approached this Court. The second submission of Mr Thombre, learned Counsel is that, in view of the order

passed by this Court, the authorities are now proceeding to comply the order by way of issuing notices for undertaking an exercise of measurement of the land and resultantly panchanama is also carried out. The copy of the panchanama is taken on record and marked 'X' for identification.

6. Perusal of the copy of panchanama shows that, in response to the notice issued by respondent No.3, the petitioner attended the spot and verified the spot for exercise of measurement of land. Interestingly, the panchanama refers to a fact that one Gram Sevak though was present on the spot, without providing any information, he just left the spot. The panchanama then refers to a proceeding pending in the Court of learned Civil Judge, Senior Division, Ambajogai. The panchanama refers to a statement of the present review applicant-Mr. Gayakwad and Mr. Gayakwad informed to the authorities that this spot is a very spot namely, Gram Panchayat

House No. 351 and 738. The panchanama then refers to the fact that the said authority again called upon the Gram Sevak to submit his say and the Gram Sevak without giving any information left the spot. Because of non responsive approach of the Gram Sevak, an exercise of measurement could not be completed and the panchanama, thus, concluded with this statement.

7. It is the submission of Mr Thombre, learned Counsel appearing for the review applicant that the exercise undertaken by the authority of joint measurement would cause some prejudice to the petitioner. Thus, these are the two submissions of Mr Thombre.

8. At the cost of repetition, we summarize the submissions of Mr Thombre, learned Counsel for seeking review of our order dated 6th March, 2019; first, the petitioner failed to add the present review applicant as a party respondent in the petition, which is the subject

matter of the suit pending in the Court of Civil Judge Senior Division, Ambajogai and secondly, the direction of this court to the authority to undertake exercise of measurement, would cause prejudice to the petitioner. As far as the first submission of Mr Thombre, learned Counsel is concerned, in our order, we have specifically referred to the facts that the petitioner was informed about the proceedings pending before the learned Civil Judge, Senior Division, Ambajogai and an interim order was passed by the Court. We have also referred to the submission of the petitioner that the petitioner on enquiry found that neither in the suit the house of the petitioner is subject matter, nor the petitioner is party. The review applicant placed on record copy of plaint. Perusal of the copy of the plaint shows that the suit is filed claiming temporary injunction against defendant Nos. 4 and 5 i.e. defendant No. 4 - The Sarpanch, Grampanchayat office, Veeda, Taluka Kaij District Beed and defendant No.5 - The Upsarpanch,

Grampanchayat Office Veeda, Taluka Kaij, District Beed.

9. Mr. Thombre, learned Counsel admitted that the cause prompted him to file review petition is the claim made against the petitioner by the grampanchayat that these review petitioners are encroachers over the plot. Perusal of the plaint shows that the reference is made to the property while the location is being referred. It is stated that the property No. 738 area east west 65', south-north 50/ situated at village Veeda, Taluka Kaij District Beed which is bounded by towards east-open space of defendant no.03, towards west-space of the plaintiff No.03, towards south-road and towards North there is ancestral property of Sakharam Kale.

10. The review applicants have not added the petitioner Dilip Sakharam Kale as party defendant in the suit. By way of the order passed by the Civil Judge, Senior Division, Ambajogai, defendant Nos. 3, 4 and 5

i.e. The Gramsevak Gampanchayat office, Veeda, Taluka Kaij District Beed, The Sarpanch Grampanchayat office Veeda, Takuka Kaij District Beed, the Upsarpanch, Grampanchayat Office, Veeda, Taluka Kaij District Beed are temporarily restrained from making any interference in the peaceful possession over the suit property till disposal of the final suit. Thus, this order clearly indicates that the suit filed by the present review applicants is pending adjudication/decision.

11. In view of all above facts, we are unable to accept submission of Mr Thombre, learned Counsel that the order passed by this Court, which is only on the backdrop of the pending application before the authority with direction to the authority to decide the application would cause serious prejudice to the review applicants, when we directed the authority and the authority is in the process of measurement of the land and the panchanama shows that the authority is also assessing the factual

position. It cannot be said that while undertaking an exercise of measurement, the authority would not apply its mind and mechanically complete the exercise of measurement. When the present review applicants themselves having no grievance against the petitioners in the suit filed by them and refers to the petitioner only as an adjacent land owner, we see no reason to accept the submission that the petitioner ought to have added them in the petition as the necessary party.

12. It is the settled position of law that the Review Applications can be entertained on a limited premises such as, error apparent on the face of record or suppression of material facts. In the present review application the applicants are unable to show that there is any error apparent on the face of record or the petitioners have suppressed material facts before this Court. As such, the review application cannot be entertained.

13. Considering all these grounds, we are of the clear opinion that the review application is devoid of any merit and the same deserves to be rejected. Same is accordingly dismissed.

[S. M. GAVHANE, J.]

[PRASANNA B. VARALE, J.]

kmk