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

**REVIEW PETITION (L) NO.73 OF 2019
IN
WRIT PETITION NO.154 OF 2019**

Ronak Gems Private Limited .. Applicants

IN THE MATTER OF

Kamlraj Associate .. Petitioner

VS.

The State of Maharashtra and Ors. .. Respondents

Mr.Jitendrakumar G. Damani for the petitioner in Review
Petition (L) No.73 of 2019

Mr.Mihir Vora i/b M/s.Pramodkumar and Co. for the petitioner in
Writ Petition No.154 of 2019

Mr.Kegar Dighe, A.G.P. for the respondent nos.1 to 4

**CORAM : K. K. TATED, J
DATE : DECEMBER 16, 2019
(IN CHAMBER AT 2.45 P.M.)**

P.C.:

. Heard.

2 By this Review Petition, original respondent no.6 is seeking
to review the order dated 24.09.2019 passed by this court in Writ

Petition No.154 of 2015.

3 Considering the submissions made by the learned counsel for the petitioner and review petition, it is crystal clear that petitioner wants to re-argue the entire matter. This is not permissible.

4 Hence, Review Petition is dismissed.

5 The only correction can be made in the order in page 6 paragraph 7 line 5 is as under:

The word “not” be deleted and the words “the land beneath the said building” be added after the word “and”.

6 Rest of the order remains as it is.

7 The original order shall stand corrected accordingly which reads thus:

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

WRIT PETITION NO. 154 OF 2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Faran Khan with M.P. Vora, Ms. Ketki i/b
Pramodkumar & Co.for the Petitioner.
Mr. Kedar Dighe, AGP for the Respondent
Nos. 1 to 4.
Mr. Jitendra Damani with Manasi Pandit for
Respondent No.6.

CORAM: K.K.TATED, J.
DATED : SEPTEMBER 24, 2019

P.C.

- 1 Heard Learned Counsel for the parties.
2. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner is challenging the following orders:
 - a. Order dated 18th November, 2016 passed by Respondent No.4.
 - b. Order dated 28th December, 2017 passed by Respondent No.3.
 - c. Order dated 4th July, 2018 passed by Respondent No.2 in respect of mutation entry of final plot No. 213(part) of Town Planning Scheme, Borivali, in favour of Respondent No. 6 on 18th November, 2016 for 1095.27 Sq.mtrs. i.e. excluding "Kesar Baug Building No. 2.
3. The Learned Counsel for Petitioner submits that, the Petitioner by article of agreement dated 07/10/2004 purchased

the piece of land at Borivali which is as under:

***“THE SECOND SCHEDULE ABOVE
REFERRED TO***

All that piece or parcel of vacant land or ground, situate, lying and being at 40 meters wide TPS Road, Borivali (West), Mumbai-400092 being City Survey Nos. 286(part) of Revenue Village and City Survey Borivali, Taluka and Registration Sub District, Borivali, District and Registration District: Mumbai Suburban, corresponding to original Plot No. 109 (part) and Old Plot No. 179(part) and New Final Plot No. 213(part) of Town Planning Scheme, Borivali No. III (Final) admeasuring about 1095.27 sq.meters and forming part of property i.e. excluding “Kesar Baug Building No.2” with tenants described in First Schedule written and bounded as follows.

On or towards the North : By Kesar Baug Building No.2

On or towards the East: Partly by New Final Plot No. 208.

On or towards the West: Partly C.T.S. No. 285 i.e. New F.P. No. 214 of TPS III.

On or towards the South: By TPS 40 meters wide road .”

He submits that, the Petitioner developed the property next to the same i.e. “Kesar Baug No.1” and used the Floor Space Index of the suit property i.e. Kesar Baug No.2. He submits that thereafter, by conveyance deed dated 27/12/2012, Respondent No. 6 purchased only structure from final plot No.

213(part)i.e. “Kesar Baug No.2”. He submits that in the said conveyance deed dated 27/12/2012 it is specifically stated that the original owner already sold the open space of the said final plot No. 213(part) to the Petitioner. In support of this contention, the Learned Counsel for the Petitioner relied upon para 7 of the said conveyance deed of “Kesar Baug No.2”.

“7. And whereas by and under the Article of Agreement dated 07-10-2004 duly registered with Sub-Registrar of Assurance Borivali - 3, M.S.D., under Sr. No. BDR-6/9801/2004 Vendors herein have sold, transferred and assigned for consideration and upon the terms and conditions more particularly contained there under, all the open space, available F.S.I., T.D.R. loading rights of the said portion on southern side of plot, admeasuring about 1310 sq. yards equivalent to Eksar, Original Plot No. 109 (part), old final plot No. 179(part), being New Final Plot No. 213(part) of Town Planning Scheme-III of Borivali in the Registration District and Sub-District of Mumbai Suburban excluding the said building known as “Kesar Baug Building No.2” with tenants (more particularly mentioned in the Second Schedule there under written) but retained the right of use of the open space for the purpose of ingress and egress to and from the said building from main Likmanya Tilak Road and Vasantrao Marg to one M/s. Kamalraj Associates, a joint venture, which developed and constructed a new building “Shreyans” on the adjoining portion of the

plot on northern side by demolishing the old "Kesar Baug Building No.1" of Kesar Baug Co-operative Housing Society Limited."

4. The Learned Counsel for the Petitioner further submits that, even in conveyance deed dated 27/12/2012 the property described below schedule B which is as under:

"SCHEDULE 'B'

The building known as "Kesar Baug", Building NO.2, having constructed area of 11,786 sq.ft., alongwith the Tenants therein as per the list attached herein and the land beneath of the said building standing on the property mentioned in the first scheduled above, alongwith the right to use the open space for the purpose of egress and Ingress to approach the said 'Kesar Baug Building No.2' from the L.T. Road and Vasantrao Road.

On or towards the East: *Partly by Final Plot No. 180 and partly by Final Plot No. 181 of the said scheme.*

On or towards the West: *Partly by the property bearing No. 178 of the said scheme, and partly by Building No. 1.*

On or towards the North: *.....*

On or towards the South”

He submits that, though all these facts were specifically stated before the Authorities, they failed and neglected to consider the same and confirm the mutation entry dated 18/11/2016 in P.R. card, that Respondent No. 6 is the owner of 1095.75 Sqmts. land from final plot No. 213(part) of Town Planning scheme, Borivali. Hence, the Petitioner filed the present Writ Petition.

5. The Learned Counsel for the Petitioner submits that, it is specifically stated in the conveyance deed dated 27/12/2012 that Respondent No.6 purchased only structure from final plot no. 213(part). The authority failed and neglected to confirm the mutation entry dated 18/11/2016 for 1095.75 Sq. meters land. Hence, they have filed the present Writ Peitition.

6. On the other hand, the Learned Counsel for Respondent No.6 vehemently opposed the present Writ Petition. He submits that by conveyance deed dated 27/12/2012 they purchased the structure with land and

hence, there is no question of setting aside mutation entry dated 18/11/2016.

7. It is to be noted that bare reading of the conveyance deed dated 27/12/2012 by which the Respondent No. 6 purchased property, prima facie shows that Respondent No.6 purchased only structure and the land beneath the said building. Therefore, the mutation entry dated 18/11/2016 is required to be tested on the basis of Article of Agreement dated 07/10/2004 by which the Petitioner purchased the open space from final plot No. 213(part).

8. Hence, I am satisfied that the Applicant has made out case for following order:

a. Admit.

b. Pending the hearing and final disposal of the Writ Petition, operation and implementation of the order dated 18.11.2016 (Exhibit-A) passed by Respondent No. 4, impugned order dated 28.12.2017 (Exhibit-B) passed by Respondent No.3 and impugned order dated 04.07.2018 (Exhibit-C) passed by

Respondent No.2 and mutation entry dated 18.11.2016 in respect of flat No. 2013 (part) of Town Planning Scheme, Borivali is stayed.

c. Request made by the Learned Counsel Mr. Jeetendra Damani for Respondent Nos. 1 to 4 to stay the operation and implementation of this order is rejected.

d. Learned Counsel Mr. Jitendra Damanifo waives service for Respondent Nos. 1 to 4 and Mr. Kedar Dighe, AGP waives service for Respondent No.6.

e. Hearing of Writ Petition is expedited.

(K.K.TATED, J.)