

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

**Civil Application No.2250 of 2020
With
Civil Application No.2249 of 2020
In
Review Application Stamp No.33941 of 2019
In
Letters Patent Appeal No.304 of 2010
In
Writ Petition No.1980 of 1998**

Gaurishankar s/o Mohanlal Vyas,
Died through legal representative
Purushottam s/o Mohanlal Vyas,
Age 74 years, Occupation : Lawyer,
R/o B-708, Whispering Heights,
Mind Space, Chincholi Bunder Road,
Malad (West), Mumbai - 400 064. .. **Applicant.**

Versus

Imamsaheb s/o Ismail Saheb,
Died his legal representatives
Mehtab s/o Imamsaheb,
Died, legal representative
Putalibee w/o Mehtabsaheb Khoriwale,
Died & deleted vide order
dated 6-10-2016 And Others. .. **Respondents.**

Shri. P.G. Karande, Senior Counsel, instructed by Shri.
D.R. Bhadekar, Advocate, for the applicant.

Shri. Gaurav L. Deshpande, Advocate, for applicant from
Civil Application No.2249 of 2020 (for intervention).

**Coram: T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

Date: 20 FEBRUARY 2020

ORDER:

1) The present application is filed for condonation of delay of 230 days caused in filing review application in respect of the decision given by this Court of Letters Patent Appeal No.304/2010. As there is huge delay and there is circumstance like one proceeding was filed in the Supreme Court to challenge the decision given in the Letters Patent Appeal by this Court but the said proceeding was withdrawn on 6-1-2020, the learned senior counsel for the applicant was asked to make out some case for review. For condonation of delay not only sufficient cause is required to be shown but some case is required to be made out in the main matter. The proceeding which was filed before the Supreme Court, was withdrawn and it cannot be said that the Apex Court had given liberty to approach this Court by filing proceeding like review application. Ordinarily, when decision is given by this Court, that decision needs to be challenged by filing appropriate proceeding in the Supreme Court.

2) It can be said that no sufficient cause is shown for the delay caused in filing the proceeding in this Court in view of the aforesaid circumstances. The learned senior counsel for the applicant submitted that this Court has not considered the circumstance that the appellant wanted to use the provisions of the Maharashtra Regional and Town Planning Act and on that basis the appellant wanted to show that the appeal is tenable. On this point, it can be said that this point was raised and that point was also touched by this Court while deciding the Letters Patent Appeal. This point was never raised before the authority and even before the learned Single Judge of this Court. In Letters Patent Appeal it was not open to raise such point and only substantial question of law could have been considered by this Court. Due to this circumstance it can be said that, this ground could not have been considered on merits.

3) The learned senior counsel for the applicant made some submission that one of the heirs of the tenant was dead when the proceeding was pending before the authority but without setting aside the abatement, the

said heir was impleaded and this ground also ought to have been considered. The record shows that this point is considered by this Court. In regard to submissions made, this Court has gone through paragraphs 17,18,19,21 and 23 of the judgment delivered by this Court.

4) Though this Court had held that Letters Patent Appeal itself was not tenable and the decision given by the learned Single Judge needs to be treated as the decision given by using power under Article 227 of the Constitution of India, this Court has touched all the points which were raised in the Letters Patent Appeal. In view of these circumstances this Court holds that the submissions made by the learned senior counsel for the applicant cannot be considered as they are not within the scope of review powers.

5) The learned senior counsel for the applicant placed reliance on some observations made by this Court on the circumstance like abatement of proceeding in the case reported as **1998(3) Mh.L.J. 618 (Jayalaxmi Janardhan v. Lilachand)**. On other point like one more

person had filed a proceeding like Civil Application No. 4006/2914 in Letters Patent Appeal No.229/2011 (Abdul Hamid v. Imamsaheb & Others) and this Court in order dated 5-5-2015 had entertained the proceeding even when no proceeding was filed before learned Single Judge to challenge the order made by the Maharashtra Revenue Tribunal, the Letters Patent Appeal was considered as tenable was argued. This circumstance also cannot be considered in the present matter as the Letters Patent Appeal No.229/2011 which was filed by Abdul Hamid is itself decided by judgment dated 4-2-2019 in respect of which the applicant wants to file review petition. In ordinary course, the decision of the Maharashtra Revenue Tribunal ought to have been challenged by filing writ petition before learned Single Judge under Article 227 of the Constitution of India but it appears that due to pendency of Letters Patent Appeal No.304/2010 the other Court had observed that such Letters Patent Appeal can be considered. The order, however, does show that the issue of maintainability of Letters Patent Appeal will have to be decided subsequently and that can be seen in paragraph No.3 of the order made on 5-5-2015 in Civil

Application No.4006/2014. Thus, the submission made in this regard is misconceived.

6) The aforesaid circumstances show that present applicant is trying to keep the dispute alive. The applicant could have taken decision from the Supreme Court where he had actually filed proceeding for challenging the decision of this Court but it was withdrawn unconditionally by the applicant and this circumstance also cannot be ignored in view of the aforesaid circumstances. In the result, the application stands rejected. The intervention application is disposed of.

Sd/-
(M.G. SEWLIKAR, J.)

Sd/-
(T.V. NALAWADE, J.)

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