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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 56 OF 2018
IN
WRIT PETITION NO.2047 OF 2014

Municipal Corporation Aurangabad through
its authorized officer A. B. Deshmukh

APPLICANT

VERSUS

Sanjay Madhukar Gangakhedkar and Others

RESPONDENTS

.....
Mr. Anand P. Bhandari, Advocate for the petitioner
Mrs.M. A. Deshpande, AGP for respondent - State
Mr. A. H. Koralkar, Advocate for original petitioner
.....

[CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.]

DATE : 22nd FEBRUARY, 2021

ORDER :

1. Applicant – Municipal Corporation, Aurangabad - original respondent No. 4 in writ petition No. 2047 of 2014 is before this court purporting to have review of order dated 1st July, 2015 in writ petition No. 2047 of 2014.
2. Original petitioner had contended in the writ petition that his land, as referred to in the petition, had been acquired for the purpose of high school, play ground and 12.19 meter wide road by municipal corporation and though award had been passed

way back in 1996, amount of land acquisition compensation had not been paid to them.

3. In the affidavit in reply to the writ petition, the applicant - municipal corporation had referred to that land of petitioner is acquired and award had been passed and amount of Rs.3,86,237/- had been deposited with the land acquisition officer.

4. The division bench, in its order passed on 1st July, 2015 observed to the effect that though award had been declared in 1996, the amount of compensation had been deposited by the corporation belatedly after eighteen years of passing of award and till date compensation had not been paid to the land owner and having regard to section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 had considered that the land acquisition proceedings had lapsed. While the land belonging to the petitioner had been taken into possession by the municipal corporation, the division bench had directed to initiate proceedings for acquisition of land, pursuant to aforesaid enactment.

5. Mr. Bhandari, learned advocate appearing for the review

applicant – corporation referring to section 24 (2) of the 2013 Enactment, submits that it is open to acquiring authority to choose and/or not to choose to initiate proceedings. He harps upon that the corporation had resolved in 2006 to delete from reservation the lands for high school and play ground and, thus, the land only to the extent of 12.19 meter wide road would be affected and in such a situation, The order being short of taking note of aforesaid, when the corporation does not intend to acquire rest of the land of the petitioner, the order would be required to be reviewed.

6. He contends, there has been declaration of law that to the land acquisition proceedings pursuant to Maharashtra Regional Town Planning Act, the provisions of 2013 Enactment would not apply and would not cover the acquisitions under said State enactment. He purports to rely on a decision of full bench answering reference in the case of *“Mehtab Laiq Ahmed Shaikh of Mumbai and Others V/s State of Maharashtra and Others”* reported in 2018 STPL 3620 Bombay : 2017 (6) Mh.L.J. 408 as well as decision of the Supreme Court in the case of *“Indore Development authority V/s Manoharlal and Others”* reported in (2020) 8 SCC 129.

7. On the other hand, Mr. Koralkar, learned advocate

appearing on behalf of original petitioner, submits that subsequent declaration of law would not be a ground at all to have review of the order. He further submits that there is statement in the affidavit in reply that petitioner's land is acquired and compensation has been deposited for the same after 2006, provisional option sought to be canvassed is afterthought and is not open for petitioner to be contended before the court in review. No case was pleaded nor any record had been produced about decision to have deletion of petitioner's land from reservation.

8. It appears that land acquisition proceedings had been undertaken and award had been passed when original petitioner's land had been shown to have been reserved for high school, play ground and road. But, for over eighteen years, amount of land acquisition compensation had not been paid. The affidavit in reply to the writ petition does not refer to decision of the corporation of 2006 for deletion of the land from reservation and such a contention is now being put forth in the present review application.

9. Order dated 1st July, 2015 appears to be based on the record as had been made available before the court. The option as sought to be referred to pursuant to section 24 (2), is

incongruous to the affidavit in reply of corporation in the writ petition.

10. A subsequent declaration of law is not a good ground having regard to decisions of the Supreme Court in the matter of “*Nandkishor Ahirwar V/s Haridas Parsedia*” reported in 2001 (9) SCC 325 and majority view / decision in “*Beghar Foundation V/s Justice K. S. Puttaswamy and Others*” in Review Petition Dairy No. 45777 of 2018 dated 11th January, 2021. A review can hardly be a remedial measure for the applicant.

11. Drawing following grounds from Order XLVII, Rule 1 of the Code of Civil Procedure for review of an order

“ (i) *discovery of new and important matter of evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made, or*

(ii) some mistake or error apparent on the face of record or

(iii) for any other sufficient reason (which has been interpreted to be analogous to the other reasons specified above). ”

in our view, no case has been made out to be covered by aforesaid grounds nor the ground of subsequent declaration of law by order dated 1st July, 2015 taken for review by the review

applicant would fall under any of the three grounds mentioned above.

11. As such, we do not see that there is any merit in the review application and the same is rejected.

12. Request made on behalf of the applicant to issue certificate under Article 134A of the Constitution of India in present review is difficult for us to be acceded to.

13. Hearing of contempt petition No. 673 of 2016 is deferred by twelve weeks.

[ABHAY AHUJA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE