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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION (L) NO. 81 OF 2019
IN
WRIT PETITION NO. 1872 OF 2019**

Harsha Harkhchand Lalan ... Petitioner
Versus
Bhavanji Shamji Lalan & Ors ... Respondents

**WITH
INTERIM APPLICATION NO. 1960 OF 2019
IN
REVIEW PETITION (L) NO. 81 OF 2019
IN
WRIT PETITION NO. 1872 OF 2019**

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RAMCHANDRA
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Harsha Harkhchand Lalan Widow of Late Shri ... Applicant/
Harakhchand Lalan Original
Petitioner
Versus
Bhavanji Shamji Lalan & Ors ... Respondents

Mr Ashok K Lakhia, *for the Applicant/ Review Petitioner.*
Mr Kunal Chheda, *for Respondent No.1/ Original Petitioner in Writ
Petition No. 1872/2019.*
Mr Amit Shastri, *AGP for Respondent No.5.*

**CORAM: K.K. TATED &
G.S. PATEL, JJ.**
DATED: 19th March 2021

PC (per GS Patel, J) :-

1. Heard.

2. The Review Petitioner seeks a review, recall or modification of the order dated 10th July 2019 passed by the Division Bench of which one of us (GS Patel, J) was a member. The Bench was presided over by the Hon'ble Shri Justice SC Dharmadhikari, who has since demitted office. Hence it comes to be placed before the present Bench.

3. The order in question was passed in Writ Petition (L) No. 1622 of 2019 filed by the 1st Respondent, Bhavanji Shamji Lalan.

4. Mr Lakhia, learned Counsel on half of the Review Petitioner, submits that the Review Petitioner, Harsha Harkhchand Lalan, a senior citizen, was one of the heirs of one Lalji Nenshi Lalan, who died intestate in Mumbai on 25th February 1963.

5. On 19th March 2015, the Court (GS Patel, J, sitting singly) made an order on Miscellaneous Petition No. 101 of 2014 under Section 2 of the Bombay Regulation VIII of 1827 granting an heirship certificate under that Regulation to all 12 heirs of Lalji Nenshi Lalan. Amongst the 12 heirs was the present Review Petitioner as also the original Writ Petitioner.

6. The original Writ Petition No. 1872 of 2019 was directed against the MCGM in relation to notices dated 4th May 2017, 29th January 2018, 21st February 2019, 12th April 2019 and 13th May 2019, seeking to have them quashed and seeking an injunction against the MCGM from taking action under those notices. Those notices pertain to the demolition of a structure standing on CTS No. 778, 778/1 and 778/2 at Irla, 85, SV Road, Vile Parle (West), Mumbai 400 056. The MCGM has required the removal of the structure or structures for road-widening.

7. The impugned order of 10th July 2019, of which review is sought, states as follows:

“1. After the writ petition was argued for some time, on previous occasions and today, the Municipal Corporation placed before us a measurement report and compliance statement.

2. On perusing the same, we asked the Counsel appearing for the petitioner in his presence as to whether the petitioner is ready and willing to hand over the property belonging to him to the Municipal Corporation for widening of the road.

3. After the Counsel spoke to the petitioner, the petitioner says that he would hand over vacant and peaceful possession of the property, meaning thereby the structure and the land beneath on or before the 16th September 2019.

4. On the possession being handed over, the Municipal Corporation to then determine the compensation payable to the petitioner for such an act of the petitioner and disburse that amount as expeditiously as possible and within a period of three months from the date of handing over the possession.

5. We clarify that we have not expressed any opinion either on the manner in which the compensation would be determined or its quantum.

6. All contentions in that regard are kept open.

7. Needless, therefore, to clarify that it would be for the petitioner to accept the amount offered under protest and without prejudice to his rights and contentions.

8. The writ petition is disposed of.

9. The statement made by the petitioner and recorded above is accepted as an undertaking to this court. On its non-compliance, all consequences in law shall follow including forcible dispossession and action in contempt.”

8. Today Mr Lakhia argues that, without consulting or obtaining consent of the Review Petitioner, the original Writ Petitioner could not have made such a statement. He submits that the heirs of the deceased had given a Power of Attorney to the Writ Petitioner, the present Review Petitioner and one Paresh Vallabhaji Shah. He submits that it was thus the moral and ethical obligation of the Writ Petitioner to consult the Review Petitioner before even filing the aforesaid Writ Petition, let alone making the statement to the Hon’ble Division Bench.

9. Having carefully considered the submission, we do not see any reason to entertain the Review Petition. In our considered view, no ground is made out either under Order 47 or Section 114 of the Code of Civil Procedure 1908 (“CPC”) to warrant a review. There is no error apparent on the face of the record. For one thing, the Power of Attorney is joint and several. This means that any one of the three Constituted Attorneys could have acted ‘severally’, i.e., on

his or her own. Second, as Mr Chheda, the learned Counsel for the original Writ Petitioner points out, the Writ Petitioner did not come to Court on the basis of the Power of Attorney at all. He not only disclosed the heirship Petition, but in paragraph 1 of the Writ Petition itself clearly stated that he was only one of the legal heirs of the deceased, Lalji Nenshi Lalan. Third, it is equally clear that, whatever be her grievances against the Writ Petitioner, the Review Petitioner cannot resist the road widening proposal of the MCGM.

10. It goes without saying that any compensation that is offered by the MCGM will have to be shared by all the heirs in accordance with law. That right to receive a share of the compensation in accordance with law is not taken away by the order of which review is sought. In any case, we clarify the position in these terms, viz., that all heirs will be entitled in accordance with law to receive their respective shares in any compensation given by the MCGM. This is sufficient protection, in our view to allay and address any concerns the Review Petitioner may have.

11. The Review Petition is disposed of in these terms.

12. The Interim Application will not survive and disposed of accordingly.

13. The Affidavit of Service is taken on file.

14. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)

(K. K. TATED, J)