

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO.564 OF 2021 (FOR REVIEW)
IN
WRIT PETITION NO.3169 OF 2021 (D)

Satish Janrao Wankhade

Vs.

The Divisional Commissioner, Amravati, Division, Amravati and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Arvind Waghmare, Advocate for petitioner/applicant.
Ms. H. N. Jaipurkar, AGP for respondent Nos.1 and 2.

CORAM : AVINASH G. GHAROTE, J.

DATE : 15/11/2021

Heard Mr. Waghmare, learned counsel for the petitioner for the review applicant. The review of the Judgment dated 27.10.2021, in Writ Petition No.3169 of 2021 is being sought on four grounds (1) that the applicant / petitioner was not an encroacher as found in para 12 of the judgment; (2) that there was no admission given by the applicant/petitioner in this regard; (3) in the earlier round of litigation, this Court had passed an order remanding the matter for spot inspection and (4) decision was based upon the resolution passed by the Gram Panchayat regarding return of land which was ignored.

2. Insofar as the contention that in the earlier round of litigation this Court has remanded the matter is concerned, that cannot be a ground for review for the reason that review has to be restricted in respect of the

judgment which is sought to be reviewed and not otherwise. Therefore, in my considered opinion, this ground is not available for seeking review.

3. Insofar as the contention that the petitioner is not an encroacher, para 12 of the judgment sought to be reviewed, categorically records that the affidavit filed by the applicant himself, along with the nomination form, the applicant/petitioner has mentioned that he is in possession of property No.286, admeasuring 400 sq. fit and is also paying taxes for the same. When a pertinent question was put to Mr. Waghmare, learned counsel for the petitioner, as to what is the document of title in respect of this property, learned counsel submits that there was a document, but it is not available. This cannot be a ground to avoid placing of the document on record as mere non-availability of a document with the applicant does not disentitle him from procuring the same from the authorities. Merely because taxes have been paid by the applicant/petitioner that by itself, would not mean that the petitioner has title to the land or is an occupier as contemplated by law. This being the position, in absence of any document establishing the nature or right under which the petitioner claimed to be in occupation of property No.286 when he had filed nomination form, the presumption would naturally be correct that since the property was Government land, the petitioner would be an encroacher. Review, is therefore not permissible on this ground also.

4. The next contention is regarding the so called admission and it is contended that no admission was given regarding the petitioner being an encroacher. The question of admission has to be considered in the factual backdrop of what has been stated by the petitioner in his affidavit, considering which, I do not find any substance in this contention also.

5. Insofar as the ground that the decision was based upon the resolution passed by the Gram Panchayat on an application by the petitioner, whereby the petitioner has surrendered the land, in my considered opinion the position in this regard is no longer *res integra*, but it is covered by the Judgment of the Hon'ble Full Bench is ***Mrs. Tilottama w/o Sanjay Kinkhede Vs. The Municipal Commissioner, Nagpur and Ors***, 2021 (3) ALL MR 536 (F. B.) wherein it has been categorically held, that the question of disqualification, vis-a-vis encroachment, has to be determined, based not upon the subsequent actions consequent to filing of the nomination, but it is based upon the earlier Act. This being the position, I do not see any ground for review being made out. The application, therefore, is without any merit and it is accordingly rejected.

JUDGE