

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

CIVIL APPLICATION NO.2087 OF 2021
IN
REVIEW APPLICATION (STAMP) NO.23740 OF 2020
WITH
REVIEW APPLICATION (STAMP) NO.23740 OF 2020

WITH
CIVIL APPLICATION NO.2085 OF 2021
IN
REVIEW APPLICATION (STAMP) NO.23802 OF 2020
WITH
REVIEW APPLICATION (STAMP) NO.23802 OF 2020

WITH
CIVIL APPLICATION NO.6448 OF 2022
IN
CIVIL APPLICATION NO.2085 OF 2021

WITH
CIVIL APPLICATION NO.6449 OF 2022
IN
CIVIL APPLICATION NO.2087 OF 2021

WITH
CIVIL APPLICATION NO.6450 OF 2022
IN
REVIEW APPLICATION (STAMP) NO.23802 OF 2020

WITH
CIVIL APPLICATION NO.6451 OF 2022
IN
REVIEW APPLICATION (STAMP) NO.23740 OF 2020

DEFENCE ESTATE OFFICER PUNE CIRCLE AND OTHERS
VERSUS
PRALHAD GANGARAM BANSWAL AND ANOTHER

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Standing Counsel for the Applicants : Shri B.M.Dhanure h/f Shri Talhar

Ajay G., ASGI
Advocate for the Respondents : Shri R.N. Dhorde, Senior Counsel a/w Shri
Pravin S. Dighe and Shri Vikram R. Dhorde

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd April, 2022

Per Court:

1. Civil Application Nos.6448/2022, 6449/2022, 6450/2022 and 6451/2022, filed for seeking to bring the legal heirs of the deceased respondent No.1 on record, are not on the Board. By consent of the parties, taken on the Board and heard. For the reasons set out, these Civil Applications are allowed. The legal heirs be brought on record.
2. The learned Senior Advocate appearing on behalf of the original petitioner expressed his readiness to canvass his arguments on the review petition itself. The Civil Application No.2087/2021 for condonation of delay of 818 days, is allowed. Delay is condoned and Review Application (Stamp) No.23740/2020 is heard.
3. It is well settled by the Honourable Supreme Court in *Lily Thomas vs. Union of India, AIR 2000 SC 1650*, that the review petition ought to make out an error apparent on the face of the order. The review petition cannot be canvassed as if the litigant is canvassing the original proceedings, the writ petition as in this case.
4. This Court has delivered the judgment on 13.08.2018. The

said judgment was assailed before the Honourable Supreme Court by preferring Special Leave Petition (Civil) Diary No.36468/2019. By order dated 08.11.2019, the Honourable Supreme Court concluded as under :-

*“Delay condoned.
We see no reason to interfere in the impugned order(s)
of the High Court. The Special Leave Petition (s) is/ are,
accordingly, dismissed.
Pending Application(s) stand disposed of.”*

5. Pursuant to the above, the review applicant preferred Review Petition before the Honourable Supreme Court. By order dated 21.07.2020, the delay in filing the review petition was condoned. The Honourable Supreme Court concluded that the review petition and connected papers have been perused. The Honourable Supreme Court did not find any error in the impugned order, much less an error apparent on the face of the record so as to call for it's review. The Review Petition was, therefore, dismissed.

6. It is, thereafter, that this Review Petition has been filed before this Court. The contention of the review petitioner is that the Board comprising of Lt.Col. Shri Y.S. Misaal, Subhedar Shri M.S.Shekhawat and Havaladar Shri Jaising Yadav, has observed in it's report dated 14.12.2016 as under :-

*“3. The following is highlighted :-
(a) If the Stn Cdr feels that any construction can be a security hazard, it will refer the matter to the next higher auth in chain of command and convey the same*

to the local municipality or State Government agencies and shall not be given directly to private parties/builders under any circumstances.

(b) With ref to letter at Para 2(d) Sanction of layout/ NOC by municipal authorities prior to 18 May 2011 are considered valid even if NOC of local Military Authority has not been sought. In this particular case of Gut No.69, the case has been initiated only after 21 June 2013 and hence NOC from local military authority is mandatory.

4. *The defence land in the vicinity of Gut No.69 is being utilized for training purpose, during trg the Guns are deployed and also the combatants are trained in the handling of ammunition of the Guns which assumes higher safety and security concerns.*

RECOMMENDATIONS OF THE BOARD OF OFFICERS

1. *The defence land in the vicinity of Gut No.69 is being utilized for training purpose, where the Guns are deployed and also the combatants are trained in the handling of ammunition of the Guns which assumes higher safety and security concerns.*
2. *As per the Map of TLR the land in Gut No.69 in respect of the applicants is at a distance of 27 mtrs from the boundary wall of defence land. However, it is felt that due to sensitivity of the activities being carried out at defence land warrants high security. The Bd of Offrs Does NOT Recommend any construction or develop of land adjacent to defence land in this particular case."*

7. The learned advocate for the review petitioners submits that since the Station Commander feels that any construction can be a security threat and Gut No.69 is being utilized for training purpose and the guns are deployed, the Board would not recommend any construction or development of the land adjacent to the defence land in this particular case.

8. I have perused the judgment dated 13.08.2018, sought to be

reviewed. The guidelines for issuance of No Objection Certificate (NOC) for building construction, were considered in paragraph 9 of the said judgment. The relevant circular dated 21.10.2016, which is issued by the Deputy Director (Lands), Government of India, Ministry of Defence, addressed to three Chiefs of the Army, Air Force and Naval Staff, clearly indicates that the Ministry of Defence has relaxed earlier norms of 100 meters distance between the private land and the defence land to a reduced distance of 10 meters. It is obvious that the Presiding Officer of the Board viz. Lt. Col. Shri Y.S.Misaal is disregarding and ignoring the circular issued by the Deputy Director (Lands), more so when it has been addressed to three Chiefs of Army, Air Force and Naval Staff. It appears from the above reproduced recommendation dated 14.12.2016 that the said Presiding Officer probably intends to devise his own norms and ignore the circular dated 21.10.2016. When his acts cannot be countenanced in the light of the circular dated 21.10.2016, there is no question of considering the said recommendation to be a ground for entertaining this review petition. In fact, the Presiding Officer is violating the norms as prescribed by the Ministry of Defence by his conduct.

9. When the original petitioner had moved Civil Application No.12128/2018, which was dealt with by this Court vide order dated 20.10.2018, the learned ASGI had tendered the communication dated 17.09.2018 addressed by the Admin Commandant to the Defence Estate

Officer, DEO Circle, Pune directing the said authority to initiate appropriate steps expeditiously for implementing the order of this Court.

10. It is apparent from the record that the present Administrative Commandant, Station Commandant, Cantonment, Aurangabad, namely, Shri Ajay Kailash seems to be bent upon not implementing the order of this Court. It is apparent that despite the Honourable Supreme Court having dismissed the SLP considering all grounds raised and also dismissed the Review Petition, he still seems to be bent upon not implementing the order of this Court, which is a clear act of defiance inviting confrontation with judicial orders.

11. In view of the above, this Review Petition (stamp) No.23740/2020 stands dismissed.

12. Considering the above, the pending Civil Application No.2085/2021 and Review Petition (stamp) No.23802/2020 with regard to the order dated 20.10.2018 passed on Civil Application No.12128/2018, would not survive and stand disposed off.