

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 296 OF 2022
IN
WRIT PETITION NO. 12720 OF 2021

Shobha wd/o Krushnaswami Kamalallu,
Age : 84 years, Occ. Household,
R/o Plot no. 28, Mustafadad,
Beed Bypass Road, Aurangabad.

...Applicant

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai-32.
2. District Collector/Magistrate,
President, District Army Welfare Officer,
Aurangabad.
3. Sub Divisional Officer,
Vaijapur, Dist. Aurangabad.
4. Tahasildar,
Vaijapur, Dist. Aurangabad

...Respondents

Mr. Sachin S. Deshmukh, Advocate for Applicant
Mr S.P. Tiwari, AGP for the State/Respondent Nos.1 to 4

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

DATE : 18th NOVEMBER, 2022

ORDER : (PER SANDEEP V. MARNE, J.)

1. By this application, the applicant, who is original petitioner, seeks review of order dated 19.08.2022 by which her petition has been dismissed.

2. The petition was filed by petitioner seeking allotment of government land. Her husband served in Indian Army between 13.03.1963 and 18.10.1972. He had made an application for allotment of government land on 08.11.1993. He expired on 14.08.2002. Petitioner thereafter made an application on 01.03.2019 for allotment of government land, which came to be rejected on 02.08.2021.

3. The writ petition has been dismissed referring to Rule 11 of the Maharashtra Land Revenue (Disposal of Government Lands Rules, 1971) under which only a serving member of the armed forces or an ex-serviceman is eligible for allotment of government land. A reference is also made under Rule 11A under which widow or legal heir of a soldier attaining martyrdom during war or warlike situation or any action is also held eligible for allotment of government land. Since petitioner is neither an ex-serviceman nor widow of a soldier attaining martyrdom during war, it is held that she does not fall within the list of eligible persons either under Rule 11 or under Rule 11A.

4. Review of the order is sought contending that the application of the petitioner's husband for allotment of government land made on 08.11.1993 has been lost sight of while rejecting the Petition. It is contended that the husband, in his capacity as ex-serviceman, was eligible for allotment of government land under Rule 11 and that this aspect is not considered while passing the order under review.

5. At the outset, it must be observed that there is no specific averment in the review application that there is an error apparent on the face of record in the order under review. For the reason of absence of such an averment alone, the review application deserves to be rejected. Nonetheless, we proceed to examine the contentions raised in the review petition.

6. Petitioner's husband had made application for allotment of government land on 08.11.1993 and he did not pursue the same till his death on 14.08.2002. His right, if any, to have his application considered for allotment of government land extinguished with his death. It is not a hereditary right which could be perused by his wife. Petitioner later made an application for allotment of government land for herself on 01.03.2019 i.e. after expiry of period of 17 long years from the death of her husband. In that application, she did not refer to any application made by her husband but sought allotment of government land to herself. In the prayer made in the petition allotment of land was sought for petitioner. There was no prayer for decision of application made by the husband on 08.11.1993. There can be no iota of doubt that the petition was filed and pursued by petitioner for allotment of land to herself on the strength of application made by her in the year 2019. We have already arrived at finding that she does not fall in the list of eligible persons under Rule 11 or Rule 11-A. Petitioner's prayer for allotment of government land to herself is accordingly rejected. Now Petitioner seeks to take a *volte face* and contend in the review application that husband's application ought to have been considered. Thus a new prayer is sought to be introduced, which was absent in the petition, which is impermissible. Even otherwise, as observed earlier, widow cannot peruse husband's claim for allotment of land after his death as widows themselves form a separate class for being considered for allotment of land. Thus, there is no error apparent on the face of record in the order under review. The review application is gross abuse of process of law. We would have been justified in imposing costs for seeking review without pleading any specific ground recognized under Order 47 Rule 1 of the Code of Civil Procedure. However only because Petitioner is a widow of a ex-serviceman, we refrain from imposing costs while rejecting the review application.

7. Consequently, Review Application is rejected without any order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL. J.]

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