

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2206 OF 2020
WITH
INTERIM APPLICATION NO. 20519 OF 2022

Aziz Majid Shaikh

.. Petitioner

Versus

Municipal Corporation of Greater Mumbai &
Ors.

.. Respondents

-
- Ms. Mamta Sadh i/by Mr. Sandeep Sharma for Petitioner
 - Mr. Suresh Pakale a/w Mr. Om Suryawanshi for MCGM
 - Mr. Kiran Bhangre, Sub-Engineer (Main), 'B' Ward is present
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 09, 2022

P.C.:

1. Heard Ms. Mamta Sadh, learned Advocate for Petitioner and Mr. Pakale, learned Advocate for MCGM at length.
2. On 06.12.2022, this Court passed the following order:-

"1. Heard Ms. Sadh, learned Advocate for Petitioner and Mr. Pakale, learned Advocate for Respondent.

2. Perusal of the impugned order 08.01.2020 indicates that the Petitioner had received specific documents as far back in 2012, inter alia, pertaining to existence of his suit structure (now demolished) since 1958 under the Right to Information Act. It was his specific case that the said documents had got mixed up with old papers and therefore he was at a disadvantage and not able to produce the same. That apart by a specific application made on 16.11.2019, Petitioner had sought documents pertaining to assessment of the demolished structure from the Corporation in order to prove his case. Impugned order proceeds on the basis that there is nothing to infer that after exercise of due diligence, the aforementioned documents were not within the knowledge of the Petitioner and therefore his Application for review came to

be rejected.

3. Mr. Pakale has vehemently argued and submitted that the scope of review has to be adhered to in the context of an error apparent on the face of the record and typographical mistake only and nothing more.

4. I disagree with Mr. Pakale's submission in the instant case. Mr. Pakale further submitted that negligence or mismanagement on the part of Petitioner to produce the aforementioned documents on time in the first instance cannot be a ground available to the Petitioner. However, I am of the opinion that if the aforementioned documents go to the root of the matter to prove the existence of the Petitioner's structure prior to the datum line, then in that case every opportunity needs to be given to the Petitioner or for that matter any litigant who approaches the Court of law. In that view of the matter, dismissal of the Petitioner's Application merely on the ground of non-exercise of due diligence on the part of Petitioner is hyper-technical. It is seen that no specific reasons have been given in respect of rejection of the Petitioner's application save and except on the ground of non-exercise of due diligence.

5. Mr. Pakale submitted that he needs to take instructions in the matter from the concerned officer.

6. Stand over to 09th December, 2022.

3. The Review Petition filed by the Petitioner came to be dismissed by the impugned order on the ground of non-exercise of due diligence by the Petitioner. That it was the Petitioner's specific case that he was not in a position to produce the documentary evidence which he had received under the Right to Information Act way back in the year 2012 in support of his case to show the existence of the notice structure since 1958. The only reason given in the impugned order was that there was nothing to infer that after exercise of due diligence that the documents were not within the knowledge of the Petitioner.

4. Without expressing any opinion on the aforementioned documents which are annexures to the Review Petition, Exh. M (Pg. 168) to the Petition, the Petitioner deserves to be given an opportunity.

5. Admittedly the said documents, if they pertain to the Petitioner's structure, cannot be deemed to be a new matter or evidence. That apart Petitioner has consented that he could not exercise due diligence since the said documents were mixed up with other papers.

6. Hence, the conclusion in the impugned order that the Petitioner's case does not comply with the requirement of Rule 1 of Order XLVII stands rejected.

7. The Petitioner shall be accorded a chance to place on record the documents which were received by him in the year 2012 under the RTI in respect of his structure as also the documentary evidence to show the existence of the structure prior to the datum line.

8. Petitioner shall place the additional documentary evidence by way of an additional affidavit in the Review Petition before the learned Trial Court within a period of four weeks from today and serve the affidavit on the Corporation in advance.

9. All contentions of both parties, including admissibility and authenticity of the said documents are expressly kept open before the Trial Court.

10. The impugned order dated 08.01.2020 passed in Review Petition is quashed and set aside. Learned Trial Court is requested to dispose of the Review Petition after considering the said affidavit of the

Petitioner within a period of four months from today.

11. Writ Petition is disposed with the above directions. Interim Application is also accordingly disposed of.

[MILIND N. JADHAV, J.]

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AMBERKAR

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by RAVINDRA
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