

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.117 OF 2022
IN
WRIT PETITION NO.11675 OF 2022
ALONG WITH
INTERIM APPLICATION NO.20241 OF 2022
ALONG WITH
INTERIM APPLICATION NO.20242 OF 2022
[Not on Board]

Mukarramuddin Nizamuddin Ansari &]
Ors.] ... Rev. Petitioners

Vs.

Dr. Nooruddin Nizamuddin & Ors. ... Respondents

...

Mr. Shakeeb Shaikh i/b Mr. Ali Bubere for review petitioners in review petition and for the applicants in Interim Application No.20241 of 2022.

Mr. Kishor Patil with Mr. Amol P. Mhatre and Mr. Sameer Mhatre for the petitioner in writ petition and for respondent No.1 in review petition.

Mr. N.R. Bubna for respondent No.2-Corporation in review petition and for respondent No.3 in writ petition.

Mr. A.I. Patel, Addl. G.P. with Mr. A.P. Vanarse, A.G.P. for respondent Nos.1, 3 to 8.

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**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.**

DATED : 09TH DECEMBER, 2022.

P.C.:-

INTERIM APPLICATION NO.20241 OF 2022

1. Interim application is not on board. Upon mentioning, taken on board.
2. By this application, the applicants seek condonation of delay in filing the review petition.
3. We have heard learned counsel for the review petitioners and learned counsel for the Municipal Corporation. We have also perused the averments made in the interim application.
4. For the reasons stated in the interim application, delay in filing the review petition is condoned. Interim application is disposed off.

REVIEW PETITION NO.117 OF 2022

5. By this review petition, the review petitioners (not parties to Writ Petition No.11675 of 2022) seek review and/or recall of order dated 20/09/2022 passed by this Court in Writ Petition

No.11675 of 2022 by which this Court disposed off the said petition recording the statement made by the original petitioner that he would demolish the offending structure within the time prescribed, failing which the Corporation to demolish the structure.

6. It is the case of the review petitioners that though the names of the review petitioners were mentioned in the notice dated 14/02/2022 issued by the Municipal Corporation, no such notice was served upon the review petitioners. The review petitioners have filed a civil suit being R.C. Suit No.221 of 2021 before the Civil Judge, Junior Division, Bhiwandi, copy of which is annexed at page No.37 of the review petition, *inter alia*, praying for declaration of title to the suit properties, including the offending structure.

7. The review petitioners have alleged collusion between the writ petitioner and the Municipal Corporation. It is not in dispute that though the alleged notice issued by the Municipal Corporation was addressed to the review petitioners, the petitioner did not implead them as party respondents to the writ petition. When the writ petition appeared before this Court on 20/09/2022, learned counsel for the petitioner made a statement, which was recorded in the said order that the offending structure, which is the subject matter of the action initiated by the Municipal Corporation, would be demolished by his client on or

before 30/11/2022.

8. This Court, accordingly, accepted the said undertaking and disposed off the said writ petition.

9. However, in the said order, it was made clear that if the offending structure is not demolished by the petitioners, the Municipal Corporation would be at liberty to demolish the offending structure and, if necessary, with the assistance of the police.

10. When the offending structure was sought to be demolished, the review petitioners came to know and filed this review petition, *inter alia*, praying for recall of the order dated 20/09/2022.

11. Mr. Patil, learned counsel for the review petitioners did not dispute that the notice was issued by the Municipal Corporation to the review petitioners also, and that they had not been impleaded as party-respondents to the writ petition. They also did not dispute that a suit was filed against the petitioner before the Civil Court, which was also in respect of the writ property. Review petitioner Nos.1 and 2 and the original petitioner are the brothers.

12. It is the case of the review petitioners that since the said

notice was not served upon the review petitioners, the review petitioners did not respond to the said notice.

13. Mr. Bubna, learned counsel for the Municipal Corporation, on the other hand, vehemently argued that there is collusion between the petitioner and review petitioners. He submitted that this Court had permitted the Municipal Corporation to demolish the offending structure, if the original petitioner did not comply with the undertaking given by him before this Court. He submitted that the entire structure is unauthorized. The notice was pasted on the offending structure by the Municipal Corporation. The Municipal Corporation has already arranged for police protection for the purpose of carrying out the direction issued by this Court.

14. Perusal of the record clearly indicates that the Municipal Corporation had mentioned the name of the review petitioners also, in the said notice dated 14/02/2022. Review petitioner Nos.1 and 2 are the brothers of the original petitioner. There appears to be a family dispute. Admittedly, the review petitioners were not impleaded as party-respondents in the writ petition. Perusal of the writ petition indicates that the petitioner has prayed for an order and direction against the Municipal Corporation to abide by the communication addressed by the Assistant Municipal Commissioner, Prabhat Committee No.1 vide notice dated 14/02/2022. It is, thus, clear that the writ

petitioner has not opposed the said notice and agreed to comply with the same and stated that the said structure would be demolished by the petitioner. It is, thus, clear that the review petitioners were not aware of filing of the said writ petition by the petitioner and about the undertaking given by the petitioner to demolish the writ structure, which may have some bearing on the claim made by the review petitioners in the suit filed by them before the civil court.

15. At this stage, learned counsel for the review petitioners states that respondent Nos.3 to 9 are tenants of the respondent Nos.1 and 2 and they are not claiming any independent right.

16. In our view, a case is made out for recall of the order dated 20/09/2022. We, accordingly, pass the following order:

- (a) Order dated 20/09/2022 passed by this Court is recalled. Writ petition is restored to file and to be heard on its own merits.
- (b) It is made clear that this Court has not expressed any opinion on the merits of the case or on the merits of the notice dated 14/02/2022 issued by the Municipal Corporation.

- (c) We direct the petitioner to implead the review petitioners in the writ petition. Leave to amend is granted. The amendment to be carried out during the course of the day. Re-verification is dispensed with. Amendment shall be carried out in the copy supplied to the Municipal Corporation. Amended copy of the petition shall also be supplied to learned counsel for the review petitioners within two days from today.
- (d) The newly added respondents to file their affidavit in reply within two weeks from the date of service of amended copy of the writ petition upon them, with a copy to be served on learned counsel for the petitioner simultaneously.
- (e) The petitioner as well as the Municipal Corporation would be at liberty to file reply to the affidavit that would be filed by the review petitioners within one week from the date of service of affidavit in reply.

17. Place this matter on board **“For Admission”** on **09/01/2023**.

18. Till next date, the Municipal Corporation shall not take any

coercive steps in respect of the offending structure.

19. Neither the petitioner nor the review petitioners shall carry out any construction or alteration in the writ structure, without obtaining prior permission from the Municipal Corporation.

20. Review petition is allowed. No order as to costs.

21. Pending interim application also stands disposed off.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]