

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 140 OF 2009
IN
PIL WRIT PETITION NO. 1325 OF 2003**

Janhit Manch & Ors.

...Petitioners

V/s.

State of Maharashtra & Ors.

...Respondents

Mr. Bhagvanji Raiyani, applicant no.2, in person.

Mr. Milind More, Additional Government Pleader for
respondent no.1/State.

Mr. Abhay L. Patki for respondent no.2.

Ms. K. H. Mastakar for respondent no.5/MCGM.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: JULY 14, 2022

P.C.:

1. This notice of motion has been filed by the petitioners in
PIL Writ Petition No. 1325 of 2003 seeking *inter alia* the
following relief:

“(a) that the Respondents be directed to construct at
the earliest the toilets for the slumdweller on Juhu
beach between Santacruz and Khar Danda as well as to
publish and implement guidelines for preventing water
pollution caused due to Ganapati, and Durga immersions
as well as other festivals in lieu of para 6 and 7 of the
order dated 22-7-2008.

(b) Ad-interim reliefs in terms of prayer (a) above;

(c) For costs of the Notice of Motion;

(d) For such other and further reliefs as the nature and circumstances of the case may require.”

2. It appears from Exhibit 'A' to the notice of motion that PIL Writ Petition No. 1325 of 2003 was disposed of with directions by a coordinate Bench vide judgment and order dated 22nd July, 2008.

3. We have heard Mr. Raiyani, petitioner no.2 appearing in person.

4. It appears from prayer (a) of the notice of motion that the petitioners, in effect, pray for modification of the order dated 22nd July, 2008.

5. Law is well settled that once proceedings stand finally terminated by a judgment and order of the Court, the same cannot be reopened except by preferring an application for review on grounds such as those mentioned in Order 47 of the Code of Civil Procedure. A notice of motion of the present nature cannot be a substitute for a review petition.

6. That apart, we need to give due regard to the decision of the Supreme Court in **State of Uttar Pradesh vs. Brahma Datt Sharma & Anr.**, reported in AIR 1987 SC 943. Law has been declared therein in clear terms that the High Court would have no jurisdiction to reopen proceedings, which stand finally terminated, by entertaining a miscellaneous application. We quote the relevant portion of the decision hereunder:

“The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on 10.8.1984, thereafter nothing remained pending before

the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated 29.1.1986 he could have filed a separate petition under Article 226 of the Constitution challenging the validity of the notice as it provided a separate cause of action to him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the Court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning."

(emphasis ours)

7. In our considered opinion, there is no valid reason why the salutary principle laid down in the above excerpt should not apply in proceedings which are in the nature of a public interest litigation. It is, after all, the jurisdiction conferred by Article 226 of the Constitution that we exercise while trying a litigation initiated in public interest. Entertaining grievances after termination of the proceedings, as the Supreme Court observed, would lead to chaos and confusion and the concept of finality being attached to proceedings would have no meaning. The petitioners not having filed a review petition with appropriate ground(s) within time, we are also not inclined to treat the notice of motion as a review petition.

8. Since we do not have the jurisdiction to entertain the notice of motion filed in a finally disposed of writ petition seeking relief, which was not granted by the parent order dated 22nd July, 2008, the notice of motion stands disposed of with the observation that if the petitioners have a fresh cause of action for seeking relief, they will be at liberty to apply before the appropriate forum in accordance with law.

9. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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GANESH
KULKARNI

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