

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 451 OF 2022

Vishwambharnath s/o Markhendey Tiwari,
Aged 80 years, Occupation – Retired,
R/o Behind S.T. Stand Mouda,
Tahsil – Mouda, District – Nagpur.

.... **PETITIONER**

VERSUS

- 1) Sunil Anandrao Lambhodhari,
Aged 60 years, Occupation – Private,
R/o Main Road, Mouda, Tahsil -
Mouda, District – Nagpur.
- 2) Rajendra Radheshyamji Jaiswal,
Aged 60 years, Occupation – Nil,
R/o Main Road, Mouda, Tahsil -
Mouda, District – Nagpur.
- 3) The Divisional Commissioner,
Nagpur Division, Nagpur, Old
Secretariat Building, Civil Lines,
Nagpur.
- 4) The Additional Collector,
Collector Building, Civil Lines,
Nagpur.
- 5) The Sub-Divisional Officer,
Mouda, Tahsil – Mouda, District -
Nagpur.

.... **RESPONDENTS**

Mr. H.B. Bargat, Counsel for the petitioner,
Mr. M.A. Kadu, AGP for respondents 3 to 5.

CORAM : ROHIT B. DEO, J.
DATED : 31st JANUARY, 2022

ORAL JUDGMENT :

The petitioner is assailing the order dated 31-12-2021 rendered by respondent 3 in Appeal 11/NAP-34/2021, whereby the appeal preferred by the petitioner assailing the order dated 09-6-2020 rendered by respondent 4, is dismissed.

2. The petitioner claims to be the owner and in possession of Plot 8 situated at Mouza Mouda. According to the petitioner, the adjoining Plot 9, admeasuring 927 square feet in area is in his physical possession since long. The petitioner applied to the Sub-Divisional Officer, Mouda (SDO) seeking regularisation of his encroachment qua the said Plot 9. The SDO issued public notice and citation on 05-5-2015 and called for report of the Talathi. The petitioner contends that the SDO also asked the Sub-Registrar Officer, Mouda to submit report. According to the petitioner, after considering the reports submitted by the Talathi and the Sub-Registrar Officer, the SDO passed an order dated 15-7-2015 regularising the petitioner's encroachment over the Plot 9. The petitioner then contends that the typographical error in mentioning the dimensions of Plot 9 was corrected by the SDO vide order dated 05-12-2017. The petitioner contends that on the basis of the

regularisation order the name of the petitioner was duly mutated in the revenue record.

3. The petitioner contends that respondents 1 and 2 preferred an application seeking review of the order dated 15-7-2015, after more than five years from the passing of the order dated 15-7-2015 and the SDO without applying mind sought permission from the Additional Collector, Nagpur to review the said order. The petitioner contends that the Additional Collector, Nagpur, without perusing the provisions of Section 258(1)(iv) of the Maharashtra Land Revenue Code, 1966 (Code) granted permission to review the order dated 15-7-2015. Aggrieved, the petitioner challenged the said order dated 09-6-2020 passed by the Additional Collector, Nagpur in Appeal Prastu/Appar.Ji./Nag/Kavi/67/2020, which is dismissed by respondent 3 by the order impugned.

4. The learned Counsel for the petitioner Mr. H.B. Bargat would argue that in view of the provisions of Section 258(1)(iv) of the Code, the authority could not have entertained the review application after ninety days and the order impugned is liable to be quashed on this ground alone. Perusal of the memo of petition reveals that there is no attempt made by the petitioner to assail the correctness of the reasons

recorded by the authority for permitting review. Notably, the Additional Collector, Nagpur has recorded, while permitting review, that Plot 9, admeasuring 927 square feet was to be used for public purpose/public well. The petitioner has not assailed the correctness of the said observation.

5. Section 258(1)(iv) of the Code on which Mr. H.B. Bargat is heavily relying reads thus :

“No order affecting any question of right between private persons shall be reviewed except on an application of a party to the proceedings, and no such application for review of such order shall be entertained unless it is made within ninety days from the passing of the order.”

6. Bare perusal of the provision reveals that its applicability is restricted to review of an order affecting any question of right between private persons.

7. Perusal of the order impugned reveals that the learned Divisional Commissioner has held that the SDO could not have regularised encroachment qua land in the layout which is reserved for public use/utilities. The learned Divisional Commissioner has further held that land reserved for public utilities is required to be handed over to the local authority. Considering the observations in the order

impugned, it cannot be said that the review pertains to an order involving private rights. In this view of the matter, the period of ninety days, which applies only to certain orders involving private rights, does not come into play.

8. The reliance placed by Mr. H.B. Bargat on the decision in *Syed Afzal Hussain Hussaini v. Hon'ble Minister, Revenue and Forest Department, Bombay and others, 2000(1) Mh.L.J. 685* is clearly misconceived. The dispute involved purely private rights, and it is in that context that the learned Single Judge has held that the review application could not have been entertained after the statutorily prescribed period. Further reliance on the decision in *Hukumchand Shankarlal Gandhi v. State of Maharashtra and another, 2007(2) Mh.L.J. 652* is equally misplaced. The said decision holds that power of review can be invoked only in circumstances enumerated in Section 258(2) of the Code. This articulation does not take the case of the petitioner any further since *prima facie*, the regularisation of the encroachment appears to be a mistake or error apparent on the face of the record. Pertinently, the issue does not involve rights between private parties as such since the land was reserved as open space in layout meant for public utilities and the Divisional Commissioner has observed that such land ought to have been surrendered/handed over

to the local authority.

9. The petition is sans merit and is dismissed with no order as to costs.

JUDGE

adgokar