

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Misc. Civil Application (MCA) 187/2022

IN

Writ Petition (WP) No. 6197/2019

Sheeraz Ahmed s/o Sarfaraz Ahmed

..VS..

The Competent Authority & Deputy Collector and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V. Purohit, Advocate for the applicant

Shri S.P. Dharmadhikari, Senior Advocate with Shri N.A. Padhye, Advocate for non-applicant no. 2

CORAM : A. S. CHANDURKAR J.

DATED : 08/04/2022

The applicant who had filed Writ Petition No. 6197/2019 seeks review of the judgment dated 11.10.2019. By that judgment the writ petition preferred by the applicant challenging the order dated 07.08.2019 passed by the competent authority under Section 3 (4)(H) of the National Highways Act, 1956 (for short the "Act of 1956") was under challenge. The writ petition was partly allowed and the dispute with regard to Khasra no. 16/2 was referred to the Civil Court for adjudicating the question with regard to the apportionment of the amount of compensation. The dispute with regard to Khasra no. 14 was not accepted and the purported dispute with regard to that khasra number was not referred to the Civil Court. Review of the order pertaining to Khasra no. 14 is sought.

The learned Counsel for the applicant submits that some portion of Khasra no. 14 was the subject matter of consideration in Writ Petition No. 151/2018 and by the judgment dated 05.03.2019

the dispute with regard to that part of Khasra no. 14 was referred to the Civil Court. The present non-applicant no. 2 had filed Special Leave Petition before the Hon'ble Supreme Court it was dismissed by observing that remedy was available to the non-applicant no. 2 before the Civil Court. Based on these observations and in the light of the law laid down in *Khoday Distilleries Limited (Now Known as Khoday India Limited) and ors. Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal* [(2019) 4 SCC 376] it is submitted that the said observations would be binding in the present proceedings for being considered in the present civil application. Reference is also made to the Sale Deed dated 12.04.1988 from which the non-applicant no. 2 claims title which is also challenged before the Civil Court. It is therefore submitted that if the dispute with regard to Khasra no. 14 is referred to the Civil Court it would be open for the non-applicant no. 2 to contest the same there.

Shri S.P. Dharmadhikari, learned Senior Advocate for the non-applicant no. 2 opposed the aforesaid submissions by urging that after considering the material on record it was found that there was no dispute with regard to there being any case for referring any dispute pertaining to Survey no. 14. The applicant was a defendant in Civil Suit No. 596/2004 and had admitted that he was not concerned with Survey No. 14. In view of the judgment in *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and ors.* [(1974) 1 SCC 242] such admission was binding on the applicant. Hence, there was no case made out for review.

Having heard the learned Counsel for the parties, I do not find that there is any error apparent on the face of record to

warrant invocation of review jurisdiction. After considering the documentary material on record reasons for not referring the dispute with regard to Khasra no. 14 to the Civil Court have been indicated in paragraph nos. 7 to 9 of the judgment. Under the garb review and by re-opening the proceedings, a different conclusion is sought to be canvassed by the applicant which would fall within the domain of appellate jurisdiction. I therefore do not find any case is made out to invoke review jurisdiction. The civil application is accordingly dismissed with no order as to costs.

JUDGE

SANDIP
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GATE

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