

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

CIVIL APPLICATION (CAO) NO.2200 OF 2019
IN
MISC. CIVIL APPLICATION STAMP NO. 22843 OF 2019
IN
WRIT PETITION NO. 151 OF 2018

Welcome Co-operative Housing Society
Vs.
The Competent Authority and Deputy Collector, Land Acquisition
(General) Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.P. Dharmadhikari, Senior Advocate with Mr. S. Zia Quazi and Mr.
T.N. Charaniya, Advocate for Applicant
Mr. K.L. Dharmadhikari, AGP for Respondent No.1
Mr. N.A. Jachak, Advocate for Respondent No.3
Mr. S.V. Purohit, Advocate for Respondent No.6
Mr.N.A. Padhye, Advocate for Respondent No.7

CORAM : MANISH PITALE, J.

RESERVED ON: 18/04/2022

PRONOUNCED ON: 25/04/2022

These are the applications for condonation of delay in filing review application and for seeking review of the order dated 05/03/2019, passed by this Court in Writ Petition No.1519 of 2018. By the said order, this Court had only partly allowed the writ petition, substantially upholding the order passed by the respondent No.1 under Section 3-H(4) of the National Highways Act, 1956 (hereinafter referred to as “the

Act”), with a direction that the applicant (original petitioner - society) would also be entitled to raise its claim before the competent Civil Court, to which the respondent No.1 had referred the dispute between the parties. It is claimed in the review application that certain factual errors had crept into the order of this Court, demonstrating that a ground for review was made out.

2. On 04/12/2019, this Court issued notice in the application for condonation of delay, as well as the application for review. The respondents entered appearance in the matter through counsel. In the facts and circumstances of the present case, the respondent No.6 appears to be the real contesting respondent.

3. On the question of delay, no serious objection was raised on behalf of the respondents. This Court perused the contents of the application for condonation of delay. For the reasons stated in the application, the same is allowed and delay is condoned.

4. As regards the review application, the principal contention raised on behalf of the applicant is that in the order of this Court dated 05/03/2019, certain aspects pertaining to facts were erroneously recorded. It was submitted that while reference of the dispute pertaining to the land in survey No.16/2 could not be disputed, the claim of respondent No.6

in respect of lands in survey Nos. 14 and 16/7, was not even *prima facie* made out, thereby necessitating review of the said order of this Court.

5. Mr. S.P. Dharmadhikari, learned Senior Advocate appearing for the review applicant submitted that this Court erroneously stated in paragraph No.6 onwards in the said order dated 05/03/2019, that names of respondent Nos.3 to 7 were recorded in the appendix to the Award dated 31/08/2017, as owners of the lands in all the three survey Nos. 14, 16/2 and 16/7. By inviting attention to the appendix to the said Award, the learned Senior Advocate pointed out that the name of predecessor of respondent No.6 was recorded in the appendix to the Award as owner of land only in Survey No.16/2, while his name was not mentioned in respect of lands in survey Nos.14 and 16/7. It was then submitted that this Court in another Writ Petition No.6197 of 2019, filed by the respondent No.6 had upheld the order of the competent authority in refusing to refer the dispute to the Civil Court, pertaining to land in survey No.14, thereby indicating that the order dated 05/03/2019, passed by this Court deserved to be reviewed.

6. By referring to the judgment and order dated 11/10/2019, passed in Writ Petition No.6197 of 2019, it was submitted that this Court had concluded that not even a semblance of dispute was demonstrated on the part of the petitioner therein i.e. respondent No.6 in the present

application, as regards land located in survey No.14. On this basis, it was emphasized that there were errors apparent on the face of the record, necessitating review of the order dated 05/03/2019.

7. The learned Senior Advocate appearing for the review applicant submitted that even if the Special Leave Petition filed by the applicant before the Hon'ble Supreme Court, challenging the order dated 05/03/2019, had been dismissed, in terms of the law laid down by the Hon'ble Supreme Court in the case of **Kunhayammed and others Vs. State of Kerala and another** reported in (2000) 6 SCC 359, the present review application was clearly maintainable, as there was no merger in the present case, in view of the fact that the Special Leave Petition was dismissed at the threshold.

8. On the other hand, Mr. S.V. Purohit, learned counsel appearing for the respondent No.6 submitted that in view of dismissal of Special Leave Petition, wherein the Hon'ble Supreme Court had agreed with the findings of this Court about availability of remedy to the applicant before the Civil Court, despite the law laid down by the Hon'ble Supreme Court in the case of **Kunhayammed and others Vs. State of Kerala and another** (supra), the review application was not maintainable. In this regard, reliance was also placed on the judgment of this Court in the case of **Khoday Distilleries Limited (now known as Khoday India Limited) and others Vs.**

Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal reported in (2019) 4 SCC 376. It was claimed that the order dated 22/04/2019, passed by the Hon'ble Supreme Court in Special Leave Petition No. 9609 of 2019, was binding on the parties and, therefore, the review application was not maintainable.

9. On the merits of the matter, it was submitted that there was no error apparent on the face of the record demonstrated by the applicant. It was submitted that reliance placed on the judgment and order of this Court in Writ Petition No.6197 of 2019, wherein respondent No.6 was the petitioner, was misplaced for the reason that it pertained to another set of acquisition concerning different pieces of land. It was then submitted that the applicant was itself relying on the sale deed dated 12/04/1988. A perusal of the said sale deed would show that the predecessor of respondent No.6 was shown as one of the vendors and the properties that were subject matter of said sale deeds were lands in survey Nos. 14, 16/2 and 16/7. It was submitted that the said document did not indicate that the applicant had treated the predecessor of respondent No.6 as the vendor in respect of only one of the survey numbers mentioned therein. Therefore, it was submitted that such a dispute could be decided only by a Civil Court.

10. It was further submitted that the petitioner had filed

the suit, challenging the aforesaid sale deed dated 12/04/1988, bearing Regular Civil Suit No.382/2018, of which this Court had taken cognizance in the order dated 05/03/2019. It was submitted that the applicant society was not justified in contending that respondent No.6 had prayed for relief in the said suit in the context of sale deed dated 12/04/1988, only in respect of land in survey No. 16/2, for the reason that in the body of the plaint, copious reference was made to lands in survey Nos.14 and 16/7 also. It was further submitted that the application for amendment was pending in the said suit. It was further submitted that there were allegations of fraud levelled by respondent No.6 in the present case against the applicant in the competent Civil Court in the aforesaid suit. In fact, it was the case of respondent No.6 that respondent Nos.3 to 5 and 7 had defrauded the respondent No.6, by entering into compromise in various civil suits initiated by the said respondents, behind the back of respondent No.6. In fact, a suit was filed by respondent No.6, challenging one such compromise decree. In this backdrop, it was submitted that the order dated 05/03/2019, passed by this Court did not deserve to be reviewed.

11. Before appreciating the contentions raised on behalf of the review applicants in seeking to demonstrate that there was an error apparent on the face of the record of the order dated 05/03/2019, passed by this Court, it would be appropriate to first deal with the objection of maintainability of

the review application raised on behalf of respondent No.6. This Court has perused the judgments of the Hon'ble Supreme Court in the cases of **Kunhayammed and others Vs. State of Kerala and another** and **Khoday Distilleries Limited Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited** (supra), in the context of maintainability of review application pertaining to an order against which a Special Leave Petition has been dismissed by the Hon'ble Supreme Court. The law laid down by the Hon'ble Supreme Court in the case of **Kunhayammed and others Vs. State of Kerala and another** (supra) has been reaffirmed in the case of **Khoday Distilleries Limited Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited** (supra). A proper application of law laid down by the Hon'ble Supreme Court would show that in the facts of the present case, it cannot be said that the review application is not maintainable. This is because, the Special Leave Petition filed by the review applicant was dismissed at the threshold and there was no declaration of law by the Hon'ble Supreme Court. As laid down in paragraph 40 of the judgment of the Hon'ble Supreme Court, in the case of **Kunhayammed and others Vs. State of Kerala and another** (supra), even if the Special Leave Petition is dismissed on merits, it would still be merits of the Special Leave Petition only and there would be no question of merger of the order, Article 136 of the Constitution of India, being a discretion available to the Hon'ble Supreme Court. Hence, this Court is convinced that there is no substance in the objection regarding maintainability of the review application raised on behalf of

respondent No.6.

12. As regards the question as to whether there was an error apparent on the face of the record, in the order dated 05/03/2019, passed by this Court, the contention regarding facts being wrongly recorded in the said order needs to be examined. It was emphasized on behalf of the applicant that this Court erroneously recorded that respondent Nos.3 to 7 were stated to be owners of lands in all the three field Survey Nos. 14, 16/2 and 16/7, in the appendix to the Award dated 31/08/2017.

13. A perusal of the appendix would show that the names of respondent Nos.3 to 7 are recorded in the appendix, in the column of owners in the said survey numbers. But, it is indeed found that the name of predecessor of respondent No.6 is recorded as one of the owners of land only in field survey No.16/2. In paragraph No.6 of the order dated 05/03/2019, while recording the contentions, a general observation was made that the names of contesting respondent Nos.3 to 7 were shown in the appendix to the Award as owners of the lands in the three survey numbers. As a general observation, the said recording in paragraph No.6 cannot be said to be wholly erroneous because the names of respondents Nos.3 to 7 are indeed found in the appendix.

14. The applicant is correct to the extent that the name

of predecessor of respondent No.6 is recorded as one of the owners only in respect of land in field survey No.16/2. But, a significant factor is that the contention of the counsel representing respondent Nos. 3 to 7, as recorded in paragraph No.6 of the order dated 05/03/2019, was not the deciding factor while substantially upholding the order of the competent authority, impugned in the writ petition. In fact, in paragraph 9, this Court recorded that the applicant itself claimed to have purchased lands in survey Nos.14, 16/2 and 16/7, by sale deed dated 12/04/1988. A perusal of the copy of the said sale deed, which was annexed to the writ petition, would show that the predecessor of respondent No.6 was indeed shown as one of the vendors along with others. The sale deed is in respect of three pieces of land located in Survey Nos.14, 16/2 and 16/7. There is nothing recorded in the said sale deed, which is a registered document, to show that the applicant society had treated the predecessor of respondent No.6 as owner of land only in field survey No.16/2.

15. It is a different matter that the respondent No.6 has filed the aforesaid suit bearing R.C.S. No.382/2018, challenging the very sale deed on the basis that it was a fraudulent document, as the same did not bear the signature of the predecessor of respondent No.6. In fact, the said predecessor of respondent No.6 was shown through a power of attorney holder and there was nothing to show that such a power of attorney existed. Nonetheless, the applicant itself has

relied upon the registered sale deed dated 12/04/1988, wherein the predecessor of respondent No.6 is shown as one of the vendors for three properties located in survey Nos.14, 16/2 and 16/7.

16. Much emphasis was placed on the prayer in the aforesaid R.C.S. No.382/2018, to contend that relief was being sought by respondent No.6, only in respect of land in survey No.16/2, thereby indicating that he had no concern with the land in Survey Nos.14 and 16/7. But, a perusal of the plaint would show that the averments on the part of respondent in the said suit were to the effect that the predecessor of respondent No.6, along with predecessor of respondent Nos.3 and respondent No.7 were joint owners of pieces and parcels of land located in survey Nos.14, 16/2 and 16/7. The said pleadings, read with the contents of the registered sale deed dated 12/04/1988, do indicate the nature of the rights claimed by respondent No.6, even in respect of lands in survey Nos. 14 and 16/7. It is also an admitted position that an application for amendment of the said plaint in R.C.S. No. 382/2018, is pending before the Court.

17. The emphasis placed by the applicant on judgment and order dated 11/10/2019, passed in Writ Petition No.6197/2019, wherein respondent No.6 was the petitioner, while seeking review of the order dated 05/03/2019, passed by this Court, is also found to be misplaced. This is for the reason

that the said writ petition arose out of order passed by the competent Authority in respect of another set of acquisition, even though from field Survey Nos. 14, 16/2. This Court is of the opinion that the competent authority in the present case had considered the nature of claims raised by the rival parties and it was found that such a dispute could be resolved by reference to the Civil Court. In that context, power under Section 3-H(4) of the aforesaid Act was exercised. Considering the fact that the respondent No.6 has raised questions of fraud and collusion against not only the applicant, but also, respondent Nos.3 to 5 and 7, in the context of the sale deed dated 12/04/1988, which itself pertains to lands in all the three survey Nos.14, 16/2 and 16/7, it cannot be said that this Court in its order dated 05/3/2019, while confirming the order of the competent authority in referring the matter to the Civil Court, committed any error apparent on the face of the record.

18. The factual errors claimed in the order of this Court dated 05/03/2019, have been dealt with hereinabove and it is found that in paragraph No.6, a general observation was made as regards the contents of the appendix to the Award dated 31/08/2017. The recording in paragraph No.6 was not the basis for the view taken by this Court in the order dated 05/03/2019. Hence, it cannot be said that the applicant has been able to demonstrate any error apparent on the face of the record of the order dated 05/03/2019, warranting review of the said order.

19. This Court is of the considered opinion that in view of the nature of allegations made by respondent No.6 against the applicant as well as the respondent Nos. 3 to 5 and 7, in the backdrop of registered sale deed dated 12/04/1988 and the pleadings in R.C.S. No.382/2018, the order of the competent authority referring the matter to the Civil Court deserved confirmation. In fact, the Hon'ble Supreme Court also observed in the order dated 22/04/2019, passed in the Special Leave Petition, that remedy is available to the applicant before the Civil Court. In fact, the applicant can very well raise such issues of complicated questions of facts before the Civil Court, to which the matter has been referred by the competent authority i.e. respondent No.1.

20. In view of the above, it is found that there is no substance in the review application and accordingly, it is dismissed.

JUDGE

MP Deshpande