

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 335 OF 2022
IN
WRIT PETITION NO.5786 OF 2021**

Hoshang Boman Nanabhoy Dordi
Age : 81 years, Occu.: Business,
R/o. Junabazar, Aurangabad,
District Aurangabad

...Applicant

VERSUS

1. The State of Maharashtra
Through : Urban Development Department
Mantralaya, Mumbai – 32 Maharashtra

2. Aurangabad Municipal Corporation
Through its Commissioner,
Aurangabad Municipal Corporation,
Aurangabad District, Aurangabad,
Maharashtra

...Respondents

...

Mr. R.F. Totala, Advocate for Applicant.

Mr. S.G. Karlekar, AGP for Respondent No.1.

Mr. A.P. Bhandari, Advocate for Respondent No.2.

...

**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

RESERVED ON : MARCH 30, 2023

PRONOUNCED ON : APRIL 13, 2023

JUDGMENT (PER S.G. MEHARE, J.) :-

01. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

02. The petitioner in Writ Petition No.5786 of 2021 decided
on 29.10.2021 after the dismissal of Petition(s) for Special Leave to

Appeal (C) No(s) 3581 of 2022 by the Hon'ble Supreme Court on 14.03.2022 has preferred this review application on the various grounds.

03. Learned Counsel for the applicant submits that the applicant did not produce the documents listed in clause (B) on page no.4 of the petition before this Court when the writ petition was decided. However, examining the list of documents which were allegedly not produced before the Court, i.e. (I) Letter of intent dated 13.04.2012, (II) Copy of Ownership Certificate dated 06.02.1962 and (III) Possession Receipt dated 06.10.1962 were filed with the Writ Petition. It seems the applicant made an incorrect statement about not filing the documents with Writ Petition.

04. Learned Counsel for the applicant vehemently argued that in paragraphs nos.4, 6 and 16 to 19 of the Judgment under review, though the Court recorded the previous history of litigation between the parties did not record the finding and conclusion. He further argued that in paragraph no.6 of the Judgment under review, there was a mention of no dispute about another suit filed by the petitioner bearing M.C.A. No.124 of 1985 and dismissal of the Writ Petition No.1096 of 1986. Reference of the proceedings bearing no. MCA No. 124/1885 and W.P. No. 1096/1986 was given in paragraphs nos.16,17, 18 and 19, but in the entire Judgment, the legal effect of the findings of the coordinate bench of the Hon'ble High Court has

been dealt with. The Court did not discuss the effect of the earlier judgments of the Writ Petition No.1096 of 1986 and Appeal No.36 of 1968 while passing the impugned Judgment under review. The writ petition was filed for a limited relief to direct respondent no.2/corporation to issue Reservation Credit Certificate (RCC for short) in lieu of handing over the reserved land to respondent no.2 within two weeks or as directed by the Hon'ble Court. However, while delivering the Judgment under review, this Court, in paragraph no.40 recorded the finding that the petitioner has no title over the plot in dispute. The title issue was not the subject matter in Writ Petition No.5786 of 2021. Therefore, said finding is beyond the scope, pleadings and documents on record. The petitioner also sought the review for any other sufficient reasons. His Counsel argued that the findings recorded by this Court under review are inconsistent with and directly in conflict with the Judgment and order dated 02.12.1986 of Writ Petition No.1096 of 1986, and they cannot be mutually reconciled in any manner at all. He further argued that the earlier Judgment in Writ Petition No.1096 of 1986 and the impugned Judgment under review could not stand side by side and directly in the teeth of binding Judgment of the Hon'ble Apex Court in Soma Isolux NH One Tollway (P) Ltd. Vs. Harish Kumar Puri & Others reported in (2014) 6 SCC 75.

05. He also relied on the following case laws:

1. S. Nagaraj & Others Vs. State of Karnataka & Anr. With connected matters reported in 1993 Supp (4) SCC 595.

2. Bachhaj Nahar Vs. Nilima Mandal & Another reported in (2008) 17 SCC 491.

3. Shivdev Singh & Others Vs. State of Punjab & Others reported in AIR 1963 SC 1909.

4. Busching Schmitz Private Limited Vs. P. T. Menghani & Another reported in (1977) 2 SCC 835.

5. Union of India Vs. The Central India Machinery Manufacturing Company Ltd. & Others reported in (1977) 2 SCC 847.

6. Sureshkumar Kanhaiyalal Jethlia Vs. State of Maharashtra & Others reported in 2002 (3) Mh.L.J 268.

7. M. M. Thomas Vs. State of Kerala & Another reported in (2000) 1 SCC 666.

8. Municipal Corporation of Greater Mumbai & Anr. Vs. Pratibha Industries Ltd. & Ors. in Civil Appeal No.11822/2018.

9. Shiv Chander More & Others Vs. Lieutenant Governor & Others reported in (2014) 11 SCC 744.

10. Sarojini Vs. State of M.P reported in 1993 Supp (4) SCC 632.

06. The Judgment of Soma Isolex NH One Tollway (P) Ltd (cited supra) was based on different facts. Hence, would not assist the applicant.

07. In the case of S. Nagaraj (supra),(It was a service matter) the Hon'ble Supreme Court has laid down the law that if the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption,

which in fact did not exist and its perpetration shall result in the miscarriage of justice, then it cannot on any principle be precluded from rectifying the error. It was also observed that the difference lies in the nature of the mistake and the scope of rectification. In paragraph no.19 of the said Judgment, it has been observed that when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order, the courts culled out such power to avoid abuse of process or miscarriage of justice. Finally, it was observed that the order passed by the Hon'ble Supreme Court, under a mistake, can be recalled to avoid injustice.

08. In the case of Bachhaj Nahar (supra), it has been observed that it is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. In a nutshell, it has been observed that in the absence of pleadings and opportunity for the defendant to deny the claim, the Court should not grant the relief under the assumption of the right of the parties.

09. He referred to **the legal maxims – Actus Curiae neminem gravabit, Actus legis est damnosus and Actus legis neminem facit injuriam,** (An act of the Court shall prejudice no man, the act of law will hurt no one, and the act of the law does injury to no one), from the case of Busching Schmitz Private Limited (supra) and argued

that the said legal maxim apply to our jurisprudence. Its application to our jurisprudence has no room for doubt.

10. The principles of review jurisdiction have been discussed in the case of Sureshkumar Kanhaiyalal Jethlia (supra). It has also been observed in the said case that the review is possible for any other sufficient reason.

11. In the case of M. M. Thomas (supra), it has been observed that the High Court as a court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. Thus, it has not only the power but a duty to correct any error apparent on the face of the record. This is the settled law as regards the scope of review.

12. In the case of Municipal Corporation of Greater Mumbai (supra), the ratio laid down by the Hon'ble Supreme Court in M.M.Thomas (supra) has been reiterated.

13. Per contra, learned counsel Mr. Bhandari for respondent no.2 has vehemently argued that the crux of the argument of the applicant's Counsel is that he is seeking a review on the discovery of the new documents. However, the relevant documents pertaining to the title were already on record. The respondent had disputed the title of the applicant in the Writ Petition. The petitioner was well aware that he had to prove his ownership. Therefore, he relied on the same documents of title which he is now relying upon. The Court has

correctly recorded the finding that the person claiming Transferable Development Right (TDR for short) or Reservation Credit Certificate (RCC for short) shall have a title over the land against which TDR or RCC was claimed. The Court has correctly held that the petitioner had no title. The applicant cannot reopen the ownership claim again when it is finally adjudicated. There is a narrow scope for review. There is no error on the face of the record. He prayed to dismiss the petition.

14. In reply, learned Counsel for the applicant argued that the contesting respondent cannot deny the effect of earlier judgments in which the respondent had asked the petitioner to remove an encroachment over the plot in dispute.

15. The learned Counsel, Mr. Totala, fairly conceded that a person claiming TDR or RCC should have the title over the property against which he is claiming such a right.

16. Before advertng to the grounds of review raised by the applicant, the Court is of the view to comment on the conduct of the applicant. After closing the Writ petition for Judgment, the petitioner sought leave to withdraw the petition. However, the leave was refused vide order dated October 20 2021.

17. As regards his conduct, in paragraph no.37 of the impugned Judgment under review, the following observations have been recorded;

“37. After reserving the Petition for Judgment, on 11.10.2021, the petitioner had placed a praecipe for permission to withdraw the petition. Hence the petition was listed for hearing on 21.10.2021. When we declined to permit the petitioner to withdraw the petition, the learned Counsel Shri Bajaj for the petitioner, argued that now the law is settled that the claim of adverse possession is a sword and not only a shield. In the light of the change in the law regarding the adverse possession, the petition may be considered, or the petitioner may be permitted to raise the same before the competent Court. To bolster his argument, he relied on the case of Ravinder Kaur Grewal and others versus Manjit Kaur and others (2019) 8 SCC 729.”

18. In paragraph no.38, this Court also observed that on the one hand, the petitioner is claiming the title over the plot in dispute and, on the other, claiming adverse possession. These observations speak a lot about the cloud over his title. It appears that after closing the petition for Judgment, the petitioner realized that his title over the disputed plot was defective as the earlier judgments were against him. Hence instead of contesting the matter on merit, he had placed a pursis for the permission to withdraw the petition. Bearing in mind the conduct of the applicant, the Court, by order dated 20.10.2021 in Writ Petition No.5786 of 2021, disposed of the pursis seeking leave to

withdraw. These facts were well within the knowledge of the applicant. That apart, the title documents, which he states new, were available before the Court when the writ petition was decided.

19. The Court held the notice of removal of encroachment issued by respondent no.2 illegal. Respondent no.2 had impugned Judgment by W.P. No.1096 of 1986. This Court, in the said W.P. held that the learned District Judge was fully justified in holding that Boman cannot by any stretch be said to be in unauthorized occupation as defined in Section 81-A (d) of the Bombay Provincial Municipal Corporation Act. The Court did not observe anything about the title of the petitioner's father, which he claimed inherited. However, in paragraph no. 7 of the W.P., the Judgment of which is under review, the applicant had made an irresponsible and false statement that the learned District Court held that he did not encroach over CTS no 3742, but they are the owners of the suit property i.e. CTS No.3742

20. The burden was on the petitioner to prove his title over the plot in the dispute against which he was claiming RCC. The Court in W.P. of which Judgment is under review, had considered the earlier suits and the Judgments of the High Court as regards the title of the petitioner. In the said Judgments, it has been held that the petitioner was not the owner of the plot in dispute. Since the title issue had attained finality, this Court was not expected to express different view

and the effect of the said Judgment on the reliefs claimed by the petitioner for the obvious reason that the parties to the said suit were bound by the Judgment. In the light of these facts, the Court finds that the arguments that the effect of the said Judgment remained to be considered while passing the impugned Judgment under review is without any legal basis.

21. The issue as regards paying the compensation to the petitioner for the portion of the land acquired for the road was also discussed. Therefore, it cannot be said that the copy of the award placed on record is a new document.

22. The petitioner has stated in the review application that the review is sought on the ground that the documents mentioned in the application were not produced before this Court. For such a relief, the applicant was to justify his failure to produce the documents during the hearing of the W.P. or the documents were not in his custody, or he could not discover the documents after due diligence, not within his knowledge or could not produce at the time when the order was passed. He submitted no explanation for the non-production of those documents at the time of passing the order. He, without justification for his failure to produce the documents on record, cannot, asks for the review. The respondent no.2 had brought the relevant documents of title on record and those were considered.

23. It would be appropriate to mention here that in the writ petition, respondent no.2 had challenged the title of the petitioner. Therefore, the petitioner was well aware that the burden was upon him to prove the title. He was well aware of the earlier litigation between them. Hence, he sought leave to withdraw the writ petition.

24. The Court has thoughtfully considered the arguments of the respective parties. Though the applicant has raised the issue that the prayer of the petitioner in the writ petition was restricted to the direction to respondent no.2/ corporation to issue TDR or RCC certificate and therefore, this Court should not have recorded the finding on the title of the applicant, the claim of TDR or RCC goes to the root of the title of the claimant over the plot in dispute. The title of the applicant was adjudicated in the earlier round of litigation.

25. The Hon'ble Supreme Court in the case of Madhusudan Reddy Vs. V. Narayan Reddy and others, Civil Appeals 5503-04-2022 arising out of petitions for Special Leave to Appeal (Civil) No.9602-03 of 2022, has held in paragraph no.18 that under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power, which enables the Superior Court to correct the errors committed by the subordinate Court.

26. The Hon'ble Supreme Court, again, in the case of Pancham Lal Pandey Vs. Neeraj Kumar Mishra, 2023 Live Law (SC) 111, has laid down the law which reads thus :

“15. The provision of review is not to scrutinize the correctness of the decision rendered rather to correct the error, if any, which is visible on the face of the order/record without going into as to whether there is a possibility of another opinion different from the one expressed. “

27. Similarly, the Hon'ble Supreme Court in the case of Lily Thomas and others vs. Union of Indian and others, (2000) 6 SCC 224 opined in paragraph no.56 that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of powers. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.....

28. Considering the arguments advanced by the learned Counsel for the applicant and the grounds raised for review, the Court is of the considered view that under the garb of review, the applicant is trying to repeat the old and overruled arguments for assailing the conclusions arrived at in the Judgment and failed to point out the visible errors on the face of the record. Bearing in mind the law laid down by the Hon'ble Supreme Court, in the above case law on the

scope of review, the Court is of the view that the petition is misconceived and deserves to be dismissed.

29. Besides the above, on our direction, the learned Counsel for the petitioner has tendered the copy of SLP (Civil) No. 3581 of 2022 filed before the Hon'ble Supreme Court challenging the order under review. On examining the grounds raised in the said special leave petition, it appears that mostly similar grounds as raised in this petition were raised in the said petition. The Hon'ble Supreme Court did not consider those grounds and dismissed the petition. It seems that the applicant is repeating the same grounds in the review petition. On this count also, the petition deserves to be dismissed.

30. Hence, the following order:

ORDER

I) The review application stands dismissed with a cost of Rs.50,000/-, to be paid to the Cancer Unit at Government Medical College, Aurangabad, within four weeks from today.

II) Rule is discharged.

(S.G. MEHARE. J.)

(RAVINDRA V. GHUGE, J.)