

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 92 OF 2023
IN
WRIT PETITION NO. 15385 OF 2022
WITH
INTERIM APPLICATION NO. 16772 OF 2023
(FOR CONDONATION OF DELAY)
AND
INTERIM APPLICATION NO. 16776 OF 2023
(FOR INTERIM RELIEF)
IN
REVIEW PETITION NO. 92 OF 2023
IN
WRIT PETITION NO. 15385 OF 2022

Johnson Robert Andrades & Ors

...Applicants/
Review
Petitioners

Versus

The State of Maharashtra through its Secretary
Urban Development Dept & Ors

...Respondents

Mr NV Walawalkar, Senior Advocate, with Suresh M Sabrad,
Vikarm N Walwalkar, Amey Sawant, for the Petitioners.
Mr MP Thakur, AGP, for the Respondent – State.
Ms Swati Sagvekar, for Respondent No. 2 – VVMC.

Mr Mayur Khandeparkar, i/b Sandeep Mahadik, for Respondent No. 5.

**CORAM G.S. Patel &
 Kamal Khata, JJ.
DATED: 31st October 2023**

PC:-

1. The Review Petition is thoroughly misconceived. It seeks a review of an order of 31st January 2023 in Writ Petition No 15385 of 2022. That order was passed by Division Bench of Sunil B Shukre & M W Chandwani, JJ. Justice Shukre has recently retired. On the administrative side, the Petitioners were told that this Interim Application for review would lie before the Regular Bench, namely this Bench.

2. The order under review is a short order. A copy is at pages 60 to 62. It reads thus:

“1. Heard learned counsel for petitioners, learned AGP for the State and learned counsel for Corporation.

2. The order dated 2/5/2019 passed by this Court in Writ Petition No.7499/2013 had directed the petitioners to produce all the documents which would denote that Municipal authorities could not have issued notice by invoking Section 53(1) of the Maharashtra Regional And Town Planning Act, 1966, and on this basis the matter was remanded back to the Vasai Virar Municipal Corporation for taking a fresh decision in respect of the legality or otherwise of the notice issued to the petitioners, for removal of the construction called by the Corporation to be unauthorised.

3. In other words, this Court had granted opportunity to the petitioners to prove their claim that they had not made any unauthorised constructions on the land under their occupation. Now, if we take a look at the order passed by the Corporation on 16/3/2021 which is impugned herein, we would find that inspite of giving of an opportunity by this Court to the petitioners, the petitioners failed to avail of it. The petitioners did not produce any documents denoting that the Corporation had no power to issue notice by invoking Section 53(1) of MRTP Act. Even in the memo of petition there is no averment that certain documents were produced before the Corporation showing the illegality of the notice issued to the petitioners. When a query was made to the learned counsel for petitioner, regarding production of relevant documents before the Corporation, the learned counsel for the petitioners did not answer the question directly and answered it by showing that there is a chart mentioned in para 4 of the memo of petition (Page No.5) giving the details of the house numbers and year of construction. It is obvious that learned counsel for petitioners has no answer to our query and it shows that petitioners did not produce any documents before the authorities in support of their claim. If this is so, we do not find any flaw or error in the impugned order. There is no substance in the petition. Petition stands dismissed.”

3. In the Review Petition itself, which we take up by consent forthwith, and in doing so condone the delay of 139 days and allow the Interim Application No 16772 of 2023 in that regard, the ground taken is that the Advocate did not point out to the Court that the Petitioners had various relevant documents in their possession. We asked Mr Walwalkar whether those documents were annexed to the Petition itself. We did so by way of abundant caution but with no

intention of suggesting that every Court must read every single piece of paper and decide or render a decision on every document in a pleading before it. Obviously, a Court will take the assistance of the arguing counsel and look at what is relevant for deciding the matter at hand.

4. To our surprise, we were told that the documents that the Petitioners now seek to rely on were never included in the annexures to the memo of the Writ Petition at all. They were apparently filed by the Petitioners with City and Industrial Development Corporation of Maharashtra (“**CIDCO**”). Therefore, even if the Petitioners’ lawyer appearing at the time of the order under review had looked for those documents he would not have found them and the Court would not have been able to see them — they were simply not part of the Petition.

5. It is now sought to be argued that this is sufficient ground for review within the meaning of Section 114 and Order 47 of the Civil Procedure Code, 1908. We do not believe that there is anything in a rational reading of Order 47 or Section 114 that warrants this approach. All settled law is to the contrary. This is not a question of discovery of new and important matter or evidence. This is not a question of anything that was not within the knowledge of the Petitioners or could not with due diligence have been produced. There is no mistake or error apparent on the face of the record because the record did not contain what Mr Walawalkar now says it ought to have contained or what the Advocate ought to have shown the Court. Indeed, his submission is that the Advocate should have

asked the Petitioners if they had any other document. That is too far-fetched for a review. We do not think any of this falls within the phrase 'any other sufficient reason'.

6. As Mr Walawalkar points out, this is really in the nature not so much of review as a plea for clemency. But a plea for clemency will not expand the restricted review jurisdiction of this Court.

7. We are expressing no opinion on the merits of the Petitioners' case. We cannot. We simply hold that the Review Petition discloses no ground for review. It is rejected. The Interim Application No 16776 for interim relief will not survive and is disposed of as infructuous.

8. No costs.

(Kamal Khata, J)

(G. S. Patel, J)