

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

I.A.Nos.3, 5 TO 11 OF 2023

IN /AND

Rev.I.A.No.2 OF 2023

IN

WRIT PETITION No.13983 OF 2010

ORDER:

Heard Sri P.Raghuram, learned Senior Counsel, representing Sri V.Ramachander Gowd, learned counsel for the petitioners and Sri K.R.Koteshwara Rao, learned counsel appearing for respondent No.1.

2. This Review Application is filed under Section 114 read with Section 151 of CPC, to review the order dated 27.06.2023 in W.P.No.13983 of 2010.

3. The petitioners 1 and 2 herein have also filed I.A.Nos.3, 5 to 11 of 2023 in this review application seeking different reliefs and the same are discussed later.

4. 3rd petitioner herein filed W.P.No.13983 of 2010 to declare the action of respondent No.1 in issuing notice dated 06.12.2007 under Section - 320 of the Cantonment Act, 2006 (for short, 'the Act, 2006') directing to demolish and remove the alleged unauthorized construction on open Plot in Survey No.33 (Part), Bowenpally, Medchal Road,

Secunderabad Cantonment, within a period of 8 days, otherwise the Cantonment Board will remove the said structures at the petitioner's cost and as confirmed by respondent No.2 in appeal vide orders dated 14.04.2010, as illegal, and consequently to set aside the said notice dated 06.12.2007 and the order dated 14.04.2010.

5. This Court vide order dated 27.06.2023, dismissed the said writ petition holding that the 3rd petitioner herein, is not having *locus standi* and on other grounds. The present review application is filed seeking to review the said order.

6. As discussed supra, 3rd petitioner herein i.e. Mr. Kiran Modi S/o C.C.Modi alone has filed the aforesaid petition. Now he along with petitioners 1 and 2 herein filed the present review application on the following grounds:-

- i. Petitioner No.2 purchased the property admeasuring 3630sq.yards consisting of constructed RCC building 5330 sq.feet and ACC shed admeasuring 5180 sq.feet and 700sq. feet Mezanine Floor area thereon in Sy.No.33 (Part) at Bowenpally, Secunderabad Cantonment from Mr. M. Mayank L.Sanghani and his family members vide registered sale deed bearing document No.1793 of 2010 dated 25.10.2010 and

on the western side of the property, service road of National Highway is existing. The site plan is annexed as Annexure P.26. Even before purchase of the said land by the 2nd petitioner, the said property was taken on lease by him, which is reflected in clause No.6 of sale deed dated 25.10.2010. The review petitioner No.2 company alienated the said property in favour of the review petitioner No.1 vide registered sale deed dated 18.01.2023 for the purpose of getting new dealership from Toyota Company as per their requirements.

- ii. Towards southern side of the aforesaid property, similar extent of land admeasuring 3630sq. yards in Sy.No.33(part) at Bowenpally, Secunderabad Cantonment was purchased by the review petitioner No.2 i.e. M/s.VSN Commercial Pvt.Ltd. represented by its Managing Director Mr.Nihar Mody, long back in 2006 from different land owners under seven sale deeds all in 2006 and all the 7 plots are situated contiguously. The site plan of 7 plots is also filed.
- iii. Having obtained the sanctioned plan and permit from the respondents, the review petitioner No.2 made constructions

in accordance with the sanctioned plan. The said land is situated abutting the service road of the National Highway.

- iv. There is no dispute with regard to construction of structures in accordance with the sanctioned plan issued by the respondents and permit on the said extent of 3630 square yards in favour the review petitioner No.2.
- v. Respondent No.1 took into consideration, the total extent of the land i.e.7186 square yards in Permit No.9 (20) dated 27.08.2005 and sub-divided the land and sanctioned the building plan for the Ground, First and Second Floor on the open plot in Sy.No.33 for an extent of 3630 square yards vide Cantonment Resolution No.26(1)) dated 07.11.2008. Therefore, the review petitioner No.2 constructed building without any violations or deviations. Thus, the properties belongs to the petitioners 1 and 2 herein are situated contiguously and the petitioners 1 and 2 represented by Mr.Nihar Mody who is the major shareholder and his family members are minor shareholders. Thus, the entire property admeasuring 7186 square yards belongs to Mr.Nihar Mody and his family members who are the

partners in the said companies. The site plan of the entire property is also filed.

- vi. Without considering the said aspects, the 1st respondent issued notice dated 06.12.2007 under Section 320 of the Act, 2006 and directed the 3rd petitioner to demolish the unauthorized construction as mentioned in the said notice.
- vii. All the notices and orders have been passed and communicated to Mr. Kiran Mody/3rd petitioner herein who is not owner of the property concerned. No notice has been issued to the petitioners 1 and 2 herein. Therefore, 3rd petitioner had filed an appeal and the same was dismissed by 2nd respondent vide order dated 14.04.2010. Challenging the same, 3rd petitioner filed W.P.No.13983 of 2010 and the same was dismissed by this Court dated 27.06.2023.
- viii. The compounding application said to have been made by the 3rd petitioner herein/writ petitioner without any authority of law and the same said to have been rejected by the 1st respondent vide proceedings dated 20.10.2010 and 30.07.2011. Mr.Nihar Mody came to know about the same recently during the pendency of W.P.No.13983 of 2010.

Having obtained copies of rejection orders, the review petitioner No.1 herein represented by its Director filed W.P.No.15985 of 2023, challenging the rejection order dated 30.07.2011. The said writ petition is pending. The said rejection order dated 30.07.2011 is contrary to the scheme of regularization under Section 248 of the Act, 2006 and therefore, the regularization application and the rejection order relates to land along with the existing buildings purchased vide sale deed dated 18.01.2023 in favour of respondents to the of 3630 square yards in Sy.No.33(Part) of Bowenpally, Secunderabad. The said property belongs to the 1st petitioner and similar extents abutting to the said land are towards southern side belongs to the 2nd petitioner. Petitioners 1 and 2 herein are common owners of both the lands.

- ix. Respondent No.1 filed counter in the writ petition stating that the original owners of the land who are his vendors, submitted an application for permission to construct multi-storied residential complex on a piece of land admeasuring 7186 square yards. The plan was sanctioned under the

Board Resolution No.9(20) dated 27-08-2005. While seeking permission to construct the building, an undertaking dated 15.12.2004 was also given stating that they will not divide the open plot consisting of 7186 square yards in Sy.No.33 (Part) at Bowenpally Village for construction of other set of buildings and if intends to do so later, layout plan will be submitted by them for sanction. They will not put the proposed building for any commercial use.

- x. Real facts were not brought to the notice of this Court by both the parties in the aforesaid writ petition.
- xi. Without considering the said aspects, this Court dismissed the said writ petition.
- xii. 3rd petitioner has no authority to file writ petition that too, without disclosing true and correct facts which leads to miscarriage of justice effecting fundamental rights of the 1st petitioner. Entire property belongs to the petitioners 1 and 2 and in fact permission was granted for construction of the commercial building as it is situated facing the National Highway abutting service road. It falls in commercial zone

and there cannot be any objection for the respondents to grant similar permission as is granted in respect of the property shown in Annexure P.7.

- xiii. There is no consideration of sanction plan in permit No.9 (20), dated 27.08.2005 issued by 1st respondent permitting the petitioners to construct 97,011sq.feet even though the petitioners were entitled to construct about the said extent of 97,011sq.ft, it has constructed only about 30,000 square yards.
- xiv. With the said grounds, they sought to review the order dated 27.06.2023 in W.P.No.13983 of 2010.

7. On the other hand, **1st respondent** filed counter contending as follows:-

- i. The present review application is not maintainable.
- ii. Petitioners have drafted the present review application as writ appeal and by changing the nomenclature without modifying the grounds, filed the present review petition.
- iii. There are no grounds to review the order.
- iv. Despite granting liberty to the 3rd petitioner, he failed to file proper documents and he has not filed any documents to

show that he is lessee. On consideration of the entire facts, this Court dismissed the writ petition holding that the 3rd petitioner herein/writ petitioner has no *locus standi* to file writ petition.

- v. All the allegations made by the petitioners against the respondents are false and baseless.
- vi. One Mr.M. Mayank L. Sanghani along with 6 others by claiming themselves as owners of open place admeasuring 7186 square yards in Sy.No.33 (Part), Bowenpally, Secunderabad Cantonment, submitted an It had submitted an application for sanction of building plan for construction of residential building comprising ground and 1st floor.
- vii. While seeking permission to construct the aforesaid building, they have submitted an undertaking dated 15.12.2004 stating that they will not sub-divide the open plot in Survey No.33 (Part) for construction of other set of buildings and that they will not use the said property for commercial purpose. If, however, intended to do so later, a layout plan would be submitted by them and the building presently proposed, if sanctioned, would also be subject to

the conditionalities imposed under layout by laws 1924 (1974) of Secunderabad Cantonment. They will not put the proposed building for any commercial usage.

- viii. After considering the said undertaking and upon scrutiny of the application, sanction was accorded for construction of residential buildings comprising of Ground, First Floor vide CBR No.9(20) dated 20.08.2005 covering the entire land admeasuring 7186 square yards.
- ix. Subsequent to sanction, though the sanction is valid for one year, they did not commence the construction. Therefore, the sanction accorded to them was lapsed.
- x. The said site was inspected on 09.05.2007 by the Assistant Engineer of the concerned area and found that the applicants were proceeding with the construction unauthorizedly without having any sanction by the Secunderabad Cantonment Board. Hence, the preliminary show cause notice dated 16.05.2007 was issued to stop construction and to submit an explanation within ten days from the date of the said notice. It has been received by the owners of the property. They did not choose to stop the

construction. Therefore, a notice under Section 248 of the Act, 2006, dated 30.06.2007 was issued after its approval by the Board to carry out the demolition of unauthorized construction pursuant to the said notice.

- xi. The applicants/owners were directed to stop the construction and remove the same within thirty days from the date of the said notice. Even then, they have not stopped and they have not responded. Therefore, 1st respondent has issued final notice dated 06.12.2007 for demolition of the construction within 8 days. 3rd petitioner herein filed an appeal before the 2nd respondent and the same was also dismissed by 2nd respondent vide order dated 14.04.2010.
- xii. Challenging the said notice dated 12.07.2007 and order dated 14.04.2010 issued by respondents, 3rd petitioner herein filed the aforesaid writ petition and the same was dismissed on merits vide order dated 27.06.2003. Therefore, the petitioners herein cannot file the present review application seeking review of the said order basing on altogether new grounds by setting a new case.

xiii. Prior to filing of the said writ petition, 3rd petitioner and others filed an application dated 09.06.2010 seeking compounding of the construction, the same was rejected vide order dated 13.08.2010 and the same was communicated to them vide letter dated 20.10.2010. They had submitted one more representation dated 24.10.2010 seeking regularization of the building and the said representation was rejected by 1st respondent-Cantonment Board vide letter dated 30.07.2011. In the said rejection order, it was clearly mentioned that the application for the said purpose was already considered and rejected earlier. The plots size in the approved plan dated 27.08.2005 whereby sanction was accorded for the open plot 7186 square yards and the said sanction was for the said residential purpose. The said plot size is not tallying with the plot size mentioned in the present regularization plan with the dimensions of the said plot on which unauthorized construction has come up. No set backs have been left on the southern and Eastern side of the building as per building by-laws and the structure shown on the plans

submitted for regularization are not tallying with the actual site conditions in respect of body shop, huge shed, parts and washing block and room etc. writ petitioner in his earlier application dated 09.06.2010 submitted for compounding, he has taken up the construction of the building and even he had preferred an appeal before the appellate authority. It would indicate that on behalf of the owner, he had submitted application for compounding. After lapse of sanction construction of building was undertaken without any valid sanction.

xiv. The said aspects were considered by this Court in the order dated 27.06.2023 and there is no error apparent on the face of the same to review the same.

xv. The petitioners instead of filing writ appeal filed the present review application.

8. With the said submissions, the 1st respondent sought to dismiss the present review application.

FINDINGS AND ANALYSIS OF THE COURT:-

9. As stated supra, the petitioners filed the aforesaid review petition under Section 114 read with 151 of CPC. Order XLVII of CPC

deals with the review. Section is substantial law whereas order is procedural law.

10. It is apt to note that the Code of Civil Procedure is divided into two parts i.e. Substantial law and Procedural law. All definitions given in the Sections formed part of Substantive law and the Procedure given in the Code form part of the Procedural law. Thus, Section provides all the contents related to the general principles of civil jurisdiction, whereas, the Order prescribes procedure and methods that are required to be proceeded with the civil cases. Thus, both the Section 114 of CPC and Order XLVII of CPC which are relevant and the same are extracted below:-

Section 114:

Subject as aforesaid, any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.
- (b) by a decree or order from which no appeal is allowed by this Code, or
- (c) by a decision on a reference from a Court of Small Causes may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

Order XLVII of CPC:

1. Application for review of judgment.

(1) Any person considering himself aggrieved-

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation-

The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

11. Section 114 of CPC gives a substantive right for review in certain circumstances and Order XLVII provides procedure. The provision relating to review constitutes an exception to the general rule and once judgment is signed and pronounced by the Court which becomes *functus officio*.

12. As per Section 114 of CPC review means to re-consider, look again and re-examine. It is judicial re-examination of the case by the same Court and same learned Judge. In reviewing, the learned Judge who has disposed of the matter reviews the earlier order passed by him in certain circumstances. The Court has the power to review its rulings to correct a “patent error” and not “minor mistakes of

inconsequential import”. A review is by no means an appeal in disguise which means the Court is allowed not to take fresh stock of the case but to correct grave errors that have resulted in the miscarriage of justice.

13. Thus, review application can be filed on three grounds:-

1. Discovery of new evidence,
2. Error apparent on the face of record.
3. Other sufficient reason.

Discovery of new evidence:

A review is permissible on discovery of new and important matter or evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. The new evidence must be such as is presumably to be believed, and if believed to be conclusive. In other words, such evidence must be relevant of such character that if it had been given it might possibly alter the judgement.

Error apparent on the face of record:-

Such error which is self-evident and requires an examination or argument to establish it. Such error may be one of fact or law as held by the Apex Court in **Karuthakritya v. R.RamalingaRaju**¹. An error cannot be said to be apparent on the face of the record where one has to travel beyond the record to see if judgement is correct or not.

Other sufficient reason:-

The expression any other sufficient reason must mean ‘a reason sufficient on grounds, at least analogous to those specified in the rule. For example, where statement in judgement is not correct or decree/order passed under a misapprehension of the true state of circumstances or where a party had no fair

¹ AIR 1955 SC 233

opportunity to produce his evidence. *Review petition can be accepted “only where a glaring omission or patent mistake or grave error has crept in earlier by judicial fallibility”*

14. It is also relevant to note that in **Lala Ram vs. Supreme Court of India**², the Apex Court in paragraph No.7 held as follows:-

7. The main purpose of a review petition is not to enforce a fundamental right, but to reopen an order vitiated by an error on the face of the record or for such other reasons. But it is said that the effect of reopening of the earlier order would be to restore his application to enforce the fundamental right and, therefore, in effect and substance, an application to review such an order is also an application to enforce the fundamental right. It may be that this is a consequence of reopening an order, but the application itself, as we have said, is not to enforce the fundamental right.

15. In **Union of India (UOI) vs. Sandur Manganese and Iron Ores Ltd.**³ the Apex Court in paragraph No.22 held as follows:-

23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In *Parsion Devi and Ors. v. Sumitri Devi and Ors.* MANU/SC/1360/1997 : (1997) 8 SCC 715, this Court held as under:

9. Under Order 47 Rule 1 Code of Civil Procedure a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 Code of Civil Procedure. In exercise of the jurisdiction under Order 47 Rule 1 Code of Civil Procedure it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise.

² AIR 1967 SC 847

³ (2013) 8 SCC 337)

16. In Mukesh vs. State of NCT of Delhi⁴, the Apex Court held as

follows:-

6. An application to review a judgment is not to be lightly entertained and this Court could exercise its review jurisdiction only when grounds are made out as provided in Order XLVII Rule 1 of the Supreme Court Rules, 2013 framed Under Article 145 of the Constitution of India. This Court in *Sow Chandra Kante and Anr. v. Sheikh Habib*, MANU/SC/0064/1975 : (1975) 1 SCC 674 speaking through Justice V.R. Krishna Iyer on review has stated the following in para 10:

10. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient.

9. The scope of review jurisdiction has been considered by this Court in a number of cases and the well settled principles have been reiterated time and again. It is sufficient to refer to judgment of this Court in *Kamlesh Verma v. Mayawati and Ors.* MANU/SC/0810/2013 : (2013) 8 SCC 320, where this Court has elaborately considered the scope of review. In paras 17, 18, 20.1 and 20.2 following has been laid down:

17. In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court in *Kerala SEB v. Hitech Electrothermics & Hydropower Ltd.* held as under: (SCC p. 656, para 10)

10. ... In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. The learned Counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of

⁴(2018) 8 SCC 149

evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review Petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise.

18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in *Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.*, held as under: (SCC pp. 504-505, paras 11-12)

11. So far as the grievance of the applicant on merits is concerned, the learned Counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted.

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the Petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram v. Neki* and approved by this Court in *Moran Marasselios Catholicos v. Most Rev. Mar Poulouse Athanasius* to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.*

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.

17. In **Kantaru Rajeevaru vs. Indian Young Lawyers**

Association⁵, the Apex Court at paragraph No.12 held as follows:-

12. A number of points have been urged before us by a large number of counsel appearing on behalf of the review Petitioners. A review petition that is filed Under Article 137 of the Constitution of India, read with Order XLVII of the Supreme Court Rules, 2013, has to be within certain parameters of a limited jurisdiction which is to be exercised. In a pithy one-paragraph judgment by Krishna Iyer, J., reported as *Sow Chandra Kante and Ors. v. Sheikh Habib*, MANU/SC/0064/1975 : (1975) 1 SCC 674, this Court laid down:

..... A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different Counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of Counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for Counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as Counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.

⁵ 2020 (2) SCC 1

18. In **Meera Bhanja vs. Nirmala Kumari Choudhury**⁶, the Apex Court considered the scope of review and relevant paragraphs are extracted below:-

8. It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, C.P.C. In connection with, the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *AribamTuleshwar Sharma v. AribamPishak Sharma and Ors.* MANU/SC/0058/1978 : 1979CriLJ908 , speaking through Chinnappa Reddy, J., has made the following pertinent observations :

It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent mis-carriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any

⁶ (1995) 1 SCC 750

long drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxmi Narayan Hegde and Ors. v. Mallikarjun Bhavanappa Tirumale* MANU/SC/0169/1959 : [1960]1SCR890, wherein K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the power of the superior Court to issue such a writ.

12. In our view the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has over-stepped its jurisdiction under Order 47, Rule 1, C.P.C. by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position indicated by us earlier. In substance, the review Bench has re-appreciated the entire evidence, sat almost as Court of appeal and has reversed the findings reached by the earlier Division Bench. Even if the earlier Division Bench findings regarding C.S. Plot No. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate court. learned Counsel for the respondent was not in a position to point out how the reasoning adopted and conclusion reached by the Review Bench can be supported within the narrow and limited scope of Order 47, Rule 1, C.P.C. Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It would not have been reviewed by re-considering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Only on that short ground, therefore, this appeal is required to be allowed. The final decision dated 8th July, 1986 of the Division Bench dismissing the appeal from appellate decree No. 569 of 1973 insofar as C.S. Plot No. 74 is concerned as well as the review judgment dated 5th September, 1984. in connection with the very same plot, i.e. C.S. Plot No. 74, are set aside and the earlier judgment of the High Court dated 3rd August, 1978 allowing the Second Appeal regarding suit plot No. 74 is restored. The appeal is accordingly allowed. In the facts and circumstances of the case, there will be no order as to costs.

19. In Haryana State Industrial Development Corporation

Ltd. vs. Mawasi⁷, the Apex Court held that

27. The aforesaid provisions have been interpreted in several cases. We shall notice some of them. In *S. Nagaraj v. State of Karnataka* MANU/SC/0797/1993 : 1993 Supp (4) SCC 595, this Court referred to the judgments in *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* MANU/FE/0001/1940 : AIR 1941 FC 1 and *RajunderNarain Rae v. BijaiGovind Singh* (1836) 1 Moo PC 117 and observed:

19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even 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. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* that an order made by the Court was final and could not be altered:

... nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.

Basis for exercise of the power was stated in the same decision as under:

It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident,

⁷ MANU/SC/0511/2012

without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. and Clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Code of Civil Procedure. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

11. In *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* AIR 1954 SC 526, the three-Judge Bench referred to the provisions of the Travancore Code of Civil Procedure, which was similar to Order 47 Rule 1 Code of Civil Procedure and observed:

It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record, and (iii) for any other sufficient reason.

It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule". See *Chhajju Ram v. Neki* AIR 1922 PC 12 (D). This conclusion was reiterated by the Judicial Committee in *BisheshwarPratapSahi v. ParathNath* MANU/PR/0040/1934 : AIR 1934 PC 213 (E) and was adopted by on Federal Court in *Hari Shankar Pal v. AnathNathMitter* MANU/FE/0004/1949 : AIR 1949 FC 106 at pp. 110, 111 (F). Learned Counsel appearing in support of this appeal recognises the aforesaid limitations and submits that his case comes within the ground of "mistake or error apparent on the face of the record" or some ground analogous thereto.

12. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* MANU/SC/0217/1963 : (1964) 5 SCR 174, another three-Judge Bench reiterated that the power of review is not analogous to the appellate power and observed:

A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out.

13. In *Aribam Tuleshwar Sharma v. AibamPishak Sharma* MANU/SC/0004/1979 : (1979) 4 SCC 389, this Court answered in affirmative the question whether the High Court can review an order passed under Article 226 of the Constitution and proceeded to observe:

But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with

appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.

14. In *Meera Bhanja v. Nirmala Kumari Choudhury* MANU/SC/0098/1995 : (1995) 1 SCC 170, the Court considered as to what can be characterised as an error apparent on the face of the record and observed:

... it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* MANU/SC/0169/1959 : AIR 1960 SC 137 wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.

15. In *Parsion Devi v. Sumitri Devi* MANU/SC/1360/1997 : (1997) 8 SCC 715, the Court observed:

An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 Code of Civil Procedure....

A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

16. In *Lily Thomas v. Union of India* MANU/SC/0327/2000 : (2000) 6 SCC 224, R.P. Sethi, J., who concurred with S. Saghir Ahmad, J., summarised the scope of the power of review in the following words:

Such powers can be exercised within the limits of the statute dealing with the exercise of power. 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. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised.

17. In *Haridas Das v. Usha Rani Banik* MANU/SC/8039/2006 : (2006) 4 SCC 78, the Court observed:

The parameters are prescribed in Order 47 Code of Civil Procedure and for the purposes of this lis, permit the Defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict.

18. In *State of West Bengal v. Kamal Sengupta* MANU/SC/3011/2008 : (2008) 8 SCC 612, the Court considered the question whether a Tribunal established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed:

At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debitojustitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

The term "mistake or error apparent" by its very connotation signifies an error which is evident *per se* from the record of the case and does not

require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 Code of Civil Procedure or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment / decision.

20. A Division Bench of the High Court of Andhra Pradesh at Amaravati in **Godway Furnicrafts vs. The State of A.P.**⁸ considered the scope of review and summarized the principles on which review application can be considered. Paragraph Nos.14,15 and 16 are relevant and the same are extracted below:-

14. Further, the Hon'ble Supreme Court in Ram Sahu (dead) through LRs and others V. Vinod Kumar Rawat and others, reviewed the entire case law on the subject and held in paragraph No. 34 as under:

"34. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been

⁸ MANU/AP/1205/2022

elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review."

15. This Court in *Ku. A. Prabhavathi, W.G. Vs. The State of A.P. Revenue Department* [I.A. No. 6 of 2018 in W.P. No. 16450 of 2004] [decided on 08.11.2019]], after referring to judgments in *T.D. Dayal v. MadupuHarinarayana* MANU/AP/1622/2013 : (2013) 6 ALT 681 (DB) and *Mohammadiya Educational Society v. Union of India*, held as under:

"Review, literally and judicially, means re-examination or reconsideration. The basic philosophy inherent in it is the universal acceptance of human fallibility. Yet, in the realm of law, Courts lean strongly in favor of the finality of a decision legally and properly made. Exceptions have been carved out to correct accidental mistakes or to prevent miscarriage of justice or to avoid abuse of process. So, the power of review would be exercised only to remove the error and not to disturb the finality. There are definitive limits to exercise the power of review. The same can be exercised on the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It can also be exercised where some mistake or error apparent on the face of the record is found. But, it may not be exercised on the ground that a decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with the appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court. The review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility".

16. The Division Bench after considering all the earlier precedents on the subject, summarised the same as follows:

1) A review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility".

2) When a new or important matter or evidence is discovered which was not within the knowledge of the person seeking review at the time of hearing the case earlier or which could not be produced by him when the order was made.

3) The normal principle is that a judgment pronounced by the Court is final, and departure from the principle is justified only when circumstances, of a substantial and compelling character, make it necessary to do so.

4) Review is not a rehearing of an original matter. The power of review cannot be confused with the appellate power which enables the appellate Court to correct all errors committed by a subordinate Court.

5) A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

6) An error which is not self-evident, and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying exercise of the power of review.

7) There is a clear distinction between an "erroneous decision" and "an error apparent on the face of the record". While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. So, the earlier order cannot be reviewed unless the Court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

8) If the judgment is vitiated by an error apparent on the face of the record, in the sense that it is evident on a mere look at the record without a long-drawn process of reasoning, a review application is maintainable. If there is a serious irregularity in the proceeding, such as violation of the principles of natural justice, a review application can be entertained."

21. In *Perry Kansagra vs. Smriti Madan Kansagra*⁹, the Apex Court held that while exercising the review jurisdiction in an application under Order XLVII Rule 1 read with Section 114 of CPC, the review

⁹ (2019) 20 SCC 753

Court does not sit in an appeal in its own order. The Apex Court held as follows:-

- (i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.
- (ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.
- (iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.
- (iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.
- (v) An application for review may be necessitated by way of invoking the doctrine '*actus curiae neminem gravabit.*' (*actus curiae neminem gravabit*) which means an act of the Court shall prejudice no man)

22. In ***Thungabhadra industries ltd. V. Govt. of A.P.***¹⁰, the Apex Court held as follows:-

“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively, but it would suffice to say that *where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and*

¹⁰ AIR 1964 SC 1372

there could reasonably be no two opinions about it, a clear case of error apparent on the face of the record would be made out."

23. *Moran mar basselioscatholicos v. Mar Poulose Athanasuis*¹¹

the Apex Court held as follows:-

538. The words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule"

24. *In Lily Thomas, Etc. Etc. vs Union Of India*¹², the Apex Court held as follows:-

The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power.

25. *In Chajju ram v. Neki ram*¹³ the words "any-other sufficient reason appearing in Order XLVII Rule 1 CPC" must mean "a reason sufficient on grounds at least analogous to those specified in the rule"[that is to say, to excusable failure to bring to the notice of the Court new and important matters, or error on the face of the record.

26. *In Board of Control for Cricket in India &Anr. v. Netaji cricket club*¹⁴, the Apex Court held as follows:-

"89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of

¹¹ AIR 1954 SC 526

¹² (2000) 6 SCC 224

¹³ AIR 1922 PC 112

¹⁴ (2005) 4 SCC 741

the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*".

27. In the light of the same, coming to the facts of the case on hand, as discussed supra, 1st and 2nd petitioners are claiming that they are the lessees and purchasers of the subject property by virtue of registered sale deed bearing document No.107 of 2023, dated 18.01.2023. But the said fact was not brought to the notice of this court despite affording opportunity. It is relevant to note that Mr.Nihar Mody, who is claiming as Managing Director of 1st and 2nd petitioner herein, son of 3rd petitioner, did not bring the said fact to the notice of this Court in the aforesaid writ petition. Even in the review petition itself, it is specifically contended by the petitioners that all the said aforesaid notices and orders have been passed and communicated to 3rd petitioner herein/writ petitioner who is not the owner of the property concerned and no notice has been issued to the petitioners 1 and 2 herein. Mr.Nihar Mody, came to know about the proceedings dated 20.10.2010 during

pendency of the said writ petition. 3rd petitioner herein/writ petitioner is the father of Mr.Nihar Mody. Therefore, Mr.Nihar Mody cannot claim ignorance of the proceedings dated 20.10.2010, rejection order dated 30.07.2011 and order dated 14.04.2010.

28. In the light of the aforesaid contentions, leave cannot be granted to the 1st and 2nd petitioners to file review. If at all they are aggrieved, they have to take steps by way of filing an appeal, but not by way of review application. In the light of the aforesaid discussion, I.A.3 of 2023 is dismissed.

29. The sum and substance of the aforesaid judgments is that a review petition can be maintained if there is a mistake apparent on the face of the record. The Court cannot re-appreciate the evidence and correct it, if at all the parties are aggrieved, they can approach the higher forum assailing the judgment passed by the Court. Re-hearing is also impermissible.

30. In the light of the aforesaid legal position, coming to the facts of the case on hand, as discussed supra, 3rd petitioner herein filed W.P.No.13983 of 2010 challenging the notice dated 06.12.2007 issued under Section - 320 of the Act, 2006 by the 1st respondent and also the

order dated 14.04.2010 passed by the 2nd respondent. He claims that he is lessee to the open plot in Sy.No.33 (Part) Bowenpally, Medchal Road, Secunderabad Cantonment. He has not filed a copy of the said lease deed despite affording opportunity. He did not even file a reply to the counter filed by the 1st respondent.

31. There is an undertaking dated 15.12.2004 given by the owners of the property i.e. Mr. M.Mayank L.Sanghani and others stating that they will not sub-divide the survey number 33(Part) for construction and they will not use the said property for commercial purpose. Construction was not commenced within the stipulated time. In the order dated 27.06.2023 in W.P.No.13983 of 2010, this Court also considered the fact that in the sale deeds filed by the petitioner, there is no mention about the permission obtained by the owners of the subject property. This Court also considered Sections 243, 245 and 249 of the Act, 2006. On consideration of the entire facts, this Court held that 3rd petitioner herein/writ petitioner has no *locus standi* to file writ petition. He has not filed a copy of lease deed. 1st respondent has power to stop construction and re-allow or demolition of the same and also to stop unauthorized construction. Respondent No.1 specifically mentioned in the counter that the subject building was constructed in violation of the procedure

contemplated under the Act and there are deviations. Even then, respondent No.1 has not taken any steps to stop the construction by demolition or sealing the property.

32. It is also brought to the notice of this Court that 1st petitioner herein M/s. Mody Automation Pvt.Ltd., represented by its Director, filed W.P.No.15985 of 2023 challenging the order dated 30.07.2011. With the said findings, this Court dismissed the writ petition.

33. It is relevant to note that vide order dated 27.06.2023, this court held that the 3rd petitioner herein did not challenge the rejection order dated 30.07.2011. Therefore, 1st petitioner herein i.e. M/s Modi Automation Private Limited filed W.P.No.15985 of 2023 challenging the said rejection order. Thereafter, the said writ petition was dismissed as withdrawn considering the letter submitted by the learned counsel for the 1st petitioner.

34. It is also relevant to note that the petitioners herein have preferred an appeal vide W.A.No.699 of 2023 challenging the order dated 27.06.2023 in W.P.No.13983 of 2010. The same was disposed of vide order dated 16.07.2023 directing the respondents not to undertake any demolition till 19.07.2023 or any other date as this Court may decide to hear the review petition. It was also observed that the Division

Bench has not examined the merits/demerits of the appeal filed against the order of this Court and the conclusions arrived at in the said order. The right of appellants to question the final order of this Court dated 27.06.2023 as well as the order that is to be passed in the review application would remain intact.

35. The aforesaid facts would reveal that 3rd petitioner herein claiming to be the lessee of open plot in Sy.No.33(Part) situated in Bowenpally Village, Secunderabad Cantonment filed the aforesaid writ petition challenging the notice dated 12.07.2007 issued by the 1st respondent under Section 320 of the Act and order dated 14.04.2010 passed by 2nd respondent in appeal. 3rd petitioner did not file a copy of the alleged lease deed. There is no mention in the writ petition that it is oral lease. Considering the said aspects, this Court passed a reasoned order dated 27.06.2023 dismissing the writ petition.

36. During hearing of the review petition, the petitioners herein have filed copy of agreement of lease dated 01.03.2006. Perusal of the same would reveal that the same was executed by Sri M. Mayank L.Sanghani and four others in favour of M/s. PSN Commercials Private Limited represented by its Managing Director Mr. Nihar Mody i.e. 2nd petitioner herein. In the schedule of property, it is mentioned that all that

property of building admeasuring 9000 sq.ft. forming part of total land formed part of Sy.No.33(part) of Bowenpally Village, Secunderabad. The lease period is 20 years commencing from 01.05.2006. Thus, even now the 3rd petitioner did not file copy of the lease deed. It is not his case that the lease is oral lease. Considering the said facts, this Court dismissed the writ petition.

37. Now the petitioners filed the present review application claiming that 2nd petitioner is the lessee and purchaser of the property vide sale deed bearing No.107 of 2023 dated 18.01.2023. They have also relied on sale deed No.1793 of 2010, dated 25.10.2010. The said facts were considered by this Court in paragraph No.21 of the order dated 27.06.2023. In fact, this Court also observed that by virtue of execution of sale deed bearing No.1793 of 2010 dated 25.10.2020, the lease deed executed in favour of 2nd petitioner M/s VSN Commercial Private Limited was cancelled. 3rd petitioner did not even mention the extent of the plot etc. 3rd petitioner i.e. Mr.Kiran Mody is not even a lessee or the owner of the property. He cannot claim that he has proceeded with the construction. There is delay in commencing the construction.

38. As discussed supra, this Court considered the contentions of the parties, provisions of Cantonment Act and dismissed the writ petition.

39. 3rd petitioner did not even file any reply to the counter filed by 1st respondent in the writ petition. Though the petitioners 1 and 2 are claiming that they are the lessees and purchasers of the subject property vide sale deed bearing No.107 of 2023 dated 08.01.2023, they have not filed copy of the same. They have not taken steps to implead in the aforesaid writ petition.

40. It is relevant to note that Mr.Nihar Mody is son of Mr.Kiran Mody. Mr.Nihar Mody is Managing Director of 1st and 2nd petitioners Company. Therefore, he cannot contend that the 1st respondent has issued notice and orders to the 3rd petitioner herein who is not owner of the property concerned. They cannot also contend that no notices have been served on the petitioners 1 and 2. Mr. Nihar Mody also cannot contend that he came to know about the proceedings dated 20.10.2010 and 30.07.2011 recently. As discussed supra, the writ petitioner is the father of Mr.Nihar Mody. Thus, they are trying to blow hot and cold together to suit their convenience.

41. Having filed W.P.No.15985 of 2023 challenging the rejection order dated 30.07.2011, they have withdrawn the same. Thus, there is no challenge to the rejection order dated 30.07.2011. Therefore, they cannot now contend that the regularization/compounding proceedings are pending.

42. Perusal of the sale deed No.107 of 2023, dated 18.01.2023 executed by the 2nd petitioner in favour of 1st petitioner would reveal that in the schedule of property, it is mentioned that all that aggregate land area 3630 sq.yards, previously covered under document No.1793 of 2010 dated 25.10.2010 and constructed RCC building, admeasuring 5330 sq.ft., and ACC shed admeasuring 5880 sq.feet, inclusive of 700sq.ft. mezzanine floor of 700 sq.ft. mezzanine floor area thereof in Sy.No.33(Part), situated at Bowenpally, Secunderabad Cantonment. When Mr.Nihar Mody himself is Managing Director of the aforesaid 1st and 2nd petitoners company, there is no explanation in the sale deed as to why 2nd petitioner company executed the aforesaid sale deed in favour of 1st petitioner company.

43. As discussed supra, Mr.Mayank L.Sanghani and others gave undertaking dated 15.04.2004. This Court also mentioned the said fact in paragraph No.20 of the order dated 27.06.2023. They have undertook

that they will not sub-divide open plot in Sy.No.33(Part) at Bowenpally, Secunderabad, for construction of other side of building. However, for construction of other set of buildings and if intends to do so later, layout plan will be submitted by them for sanction and that they will not put the proposed building for any commercial use and the building presently proposed, if sanctioned, would also be subject to the conditionalities imposed under layout by laws 1924 (1974) of Secunderabad Cantonment. They would not put the proposed building for commercial use. They have not commenced the work within stipulated time. There is violation of the provisions of the Act and also the aforesaid undertaking. They are using the building for the commercial purpose contrary to the undertaking. Considering the said aspects, this Court dismissed the writ petition vide order dated 27.06.2023.

44. As discussed supra, the petitioners herein have filed the present writ petition by taking all the new pleas. The grounds urged by them in the present review petition are not falling in any of the grounds to seek review of the order dated 27.06.2023

45. Perusal of the grounds would reveal that the petitioners have typed the grounds as if it is a writ appeal and converted the same as review petition.

Ground No.B is relevant and the same is extracted below:-

“B. that the Impugned Order is contrary to principles of Natural Justice as the matter was heard without knowing the correct facts of the case.”

Thus, the petitioners 1 and 2 without impleading them in the aforesaid writ petition and that the 3rd petitioner without filing rejoinder to the counter filed by the 1st respondent and relevant documents, cannot allege that the matter was heard without knowing the correct facts of the case. It is a serious allegation against this Court.

46. As discussed supra, the grounds raised by the petitioners cannot be treated as the grounds to review the order. The order dated 27.06.2023 in W.P.No.13983 of 2010 is a reasoned order and it does not call for any review. If the petitioners are aggrieved, they have to prefer an appeal but they cannot file review. Having filed the aforesaid writ appeal, they are not pursued it properly. Therefore, this review application is liable to be dismissed.

47. It is also relevant to note that the 3rd petitioner herein has filed I.A.No.1 of 2023 in W.P.No.13983 of 2010 seeking to reopen the present writ petition and the same was dismissed by this Court on 27.06.2023.

48-a. Petitioners 1 and 2 herein filed I.A.No.5 of 2023 to implead themselves as petitioners 2 and 3 in the said writ petition. Since the very review application is dismissed, this application is also dismissed.

48-b. Petitioners 1 and 2 herein filed a petition vide I.A.No.6 of 2023 seeking to permit them to withdraw W.P.No.13983 of 2010. Since the very review application is dismissed, this application is also dismissed.

48-c. Petitioners 1 and 2 herein have filed I.A.No.7 of 2023 to grant stay of demolition of the existing structures in the property shown in Annexure P.26. Since the said review application is dismissed, this application is also dismissed.

48-d. Petitioners 1 and 2 herein have filed I.A.No.8 of 2023 to suspend the order dated 27.06.2023 in W.P.No.13983 of 2010. Since the said review application is dismissed, this application is also dismissed.

48-e. Petitioners 1 and 2 herein have filed I.A.No.9 of 2023 to permit the review petitioners to substitute the grounds A to H in paragraph No.7 of the review I.A.No.2 of 2023 in W.P.No.13983 of 2010 with the grounds A to O mentioned in paragraph No.5 of the Affidavit annexed to the petition.

49. It is relevant to note that when the review application came up for hearing, this Court pointed out the grounds raised by the petitioners and thereafter, they have filed this application. The reasons mentioned by the petitioners are not satisfactory. Mr.Nihar Mody being the son of 3rd petitioner Mr.Kiran Mody, cannot contend that he is ignorant of the entire proceedings. In the light of that, this application is liable to be dismissed and accordingly dismissed.

49-f. Petitioners 1 and 2 herein have filed I.A.No.10 of 2023 to stay the demolition and all further proceedings in Lr.No.SCB/EB/Vacation Notice/1614, dated 14.07.2023 (affixed on the premises wall on 15.07.2023 at 2.00 P.M.) issued by respondent No.1. Since the said review application is dismissed, this application is also dismissed.

49-g. Petitioners 1 and 2 herein have filed I.A.No.11 of 2023 to consider the case of the petitioner for regularization of structures in Northern portion/property 'A' by setting aside the orders dated 20.10.2010 and 30.07.2011 passed by the respondent No.1. Though the petitioners filed W.P.No.15783 of 2023 challenging the rejection order 30.07.2011 and having withdrawn the same, without seeking the leave,

they cannot seek set aside the orders dated 20.10.2010 and 30.07.2011, that too, by way of filing Interlocutory Application.

50. As discussed supra, the petitioners have filed the present review petition stating new facts, taking new pleas and they have set up a new case altogether. They are seeking re-hearing and fresh adjudication which is impermissible. They have not stated any sufficient reason to review the order dated 27.06.2023 in W.P.No.13983 of 2010. Viewed from any angle, this Review Application is liable to be dismissed.

51. In view of the aforesaid discussion, this Review Application is dismissed. Consequently, the I.A.Nos.3, 5 to 11 are dismissed.

JUSTICE K. LAKSHMAN

Date:15.09.2023.

vvr.