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

**55 CIVIL APPLICATION NO. 10576 OF 2024
IN/WITH
REVIEW APPLICATION (ST.) NO. 3309 OF 2024
IN
WRIT PETITION NO.15437 OF 2023**

**AYYUB KHAN QAISER KHAN, THROUGH GPA NUZHAT ZEBA
AYYUB KHAN**

VERSUS

**THE STATE OF MAHARASHTRA THROUGH DISTRICT
COLLECTOR AND OTHERS**

....

Mr S. S. Kazi, Advocate for Applicant;

Mr N. S. Tekale, A.G.P. for Respondents/State

**CORAM : RAVINDRA V. GHUGE
AND**

Y. G. KHOBRAGADE, JJ.

DATE : 30th September, 2024

PER COURT:

1. For the reasons set out, **this Civil Application** for condonation of delay **is allowed**. The Review Application is taken up for hearing, by consent of the parties.

2. When we passed the order dated 18/12/2023, in Writ Petition No.15437/2023, we had recorded in paragraph Nos.1 and 2, as under :-

(2)

“1. A private dispute between the Petitioner-Landlord and Respondent No.5-Sarpanch of the Gram Panchayat Farola, is brought before this Court. The Petitioner claims that he is the owner of the parcel of land in which an arch has been erected. A common road appears to be the place where the arch has been constructed. The Petitioner prays that the Government can acquire the land. However, there is no public project involved.

2. The learned AGP submits that the dispute brought before the Court is purely of a civil nature and the Petitioner can approach the Civil Court for protecting his land.”

3. In view of the above, we had disposed off the Writ Petition with liberty, by observing in paragraph No.3, as under :-

“3. Considering the above, this petition is disposed off with liberty to the Petitioner to approach the Competent Court for seeking appropriate reliefs against the Respondents.”

4. The Petitioner has placed colour photographs before us. A glance at the photographs at Page Nos.43 and 44, reveals that the road seems to be in use for quite a long time. The colour pictures clearly indicate that the road has been in long use. There are no agricultural fields on either sides of the road. There is no

(3)

agricultural activity on either sides of the road. The ‘Kaman’ (Arch) is from the entry of the village, clearly making out an age old road.

5. The scope of review has been settled in **Lily Thomas and others Vs. Union of India and others, [(2000) 6 Supreme Court Cases 224]**; **S. Madhusudan Reddy Vs. V. Narayana Reddy and others, [2022 LiveLaw (SC) 685] : [2022 SCC Online SC 1034]** and **Pancham Lal Pandey Vs. Neeraj Kumar Mishra and others, [2023 SCC Online SC 143] : [AIR 2023 SC 948]**.

6. The Applicant/Petitioner relies upon the judgment delivered by the Hon’ble Supreme Court in **Sayed Maqbool Ali Vs. State of Uttar Pradesh and another, [(2011) 15 SCC 383]**, more specifically, paragraph 9, which reads as under :-

“9. The remedy of a landholder whose land is taken without acquisition is either to file a civil suit for recovery of possession and/or for compensation, or approach the High Court by filing a writ petition if the action can be shown to be arbitrary, irrational, unreasonable, biased, mala fide or without the authority of law, and seek a direction that the land should be acquired in a manner

(4)

known to law. The appellant has chosen to follow the second course. The High Court was not, therefore, justified in dismissing the writ petition on the ground that the remedy was under Section 18 of the Act. The order of the High Court, which is virtually a non-speaking order, apparently proceeded on the basis that the appellant was seeking increase in compensation for an acquired land. The matter therefore, requires to be reconsidered by the High Court, on merits.”

7. We are afraid that the reliance placed by the Petitioner on the said judgment, is misplaced. In the said matter, certain lands in village Sarai Badli, Ibrahimpur Danda and Pargana Kora, District Fatehpur, Uttar Pradesh, were acquired for the construction of 6 Kms. road from Jahanabad to Garhi Jafarganj in the year 1982. Compensation was paid to the land owners in 1983. In this backdrop, the Hon’ble Supreme Court recorded its observations in paragraph No.9, reproduced above.

8. In the case before us, as we noticed from the colour photographs that, there is no agricultural activity on either side of the road and it is an unsustainable contention of the Petitioner that the road has been prepared in the middle of his land or in the land belonging to him. We can clearly see a common path and the

(5)

Grampanchayat has erected an Arch, which is at the entrance connecting the said *Kaccha Road* to the village.

9. In view of the above, we do not find any merits in the Review Application. No error on the face of the order has been pointed out. **The Review Application is, therefore, rejected.**

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

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