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

**906 CIVIL APPLICATION NO. 2786 OF 2024
IN WP/112/2021**

**SUNIL VITTHALRAO YADAV
VERSUS
RAM DNYANOBA BASTAPURE AND OTHERS**

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Mr S. S. Thombre, Advocate for Applicant;
Mr T. M. Venjane, Advocate for Respondent No.1
Ms Neha Kamble, A.G.P. for Respondent No.2/State
Mr A. N. Patale, Advocate for Respondent No.3
Mr V. D. Gunale, Advocate for Respondent No.4

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRADE, JJ.**

DATE : 10th July, 2024

PER COURT:

1. By this Civil Application, the Applicant, namely, Shri. Sunil Vitthalrao Yadav, who has superannuated as an 'Additional Collector', prays for recalling certain observations made by this Court, vide the order dated 12/02/2024, passed in Writ Petition No.112/2021. The Applicant has filed an affidavit dated 26/06/2024, which is taken on record and marked as '**X-1**' for identification.

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2. The learned Advocate Shri. V. D. Gunale, submits that Respondent No.3 in the original Writ Petition Shri. Suryakant Vitthal Shelke (Respondent No.4 in this Civil Application), had approached the Hon'ble Supreme Court by filing a Special Leave Petition (Civ.) Diary No. 10236/2024. By an order dated 06/05/2024, the said Special Leave Petition has been dismissed, since the Petitioner/Suryakant prayed for leave to challenge the original order dated 12/10/2020, passed by the present Applicant Shri. Sunil Vitthalrao Yadav (the then Sub Divisional Officer, Latur). Such liberty was granted. No Writ Petition has been filed until today.

3. We have heard the learned Advocates for the Applicant and the Original appearing parties in the Writ Petition. Since our order dated 12/02/2024, is sought to be reviewed to the extent of certain observations against the present Applicant, it would be apposite to reproduce paragraph Nos.5 to 11 hereunder :-

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“5. We are not convinced by the contention of Respondent No.3 that the application seeking review can be considered under Section 3-I(b). There is no power of review vested in the Second Respondent. It is a crystallized position of law that an order on a review application can be passed only if the statute provides or vests power in a particular authority to review its order. The contention of Respondent No. 2 is that there was an understanding between Respondent No.3 and the Petitioner. The Petitioner vehemently refutes the said statement.

6. Be that as it may, merely because two parties may come hand in hand before an authority and seek review of an order without the statute vesting any power in that authority to pass an order on a review application, consent of the parties would not create jurisdiction in the Second Respondent. When matters involve disbursement of money, the statutory authorities have to be extremely careful, diligent and vigilant. We strongly disapprove of the conduct of Respondent No.2 and this is a fit case to direct the District Collector to initiate disciplinary proceedings against the said officer, namely Shri Sunil Yadav. The learned Standing Counsel for the Union of India representing Respondent No.2, submits that this is the first reported case wherein the said authority has passed such an order.

7. This Petition is allowed. The impugned order dated 16.12.2020 is quashed and set aside and the review application filed by Respondent no.3, stands dismissed.

8. Since the Third Respondent has given an undertaking to Respondent No.2 to refund the amount if there is any order of any authority or the Court, we direct Respondent

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No.3 to re-deposit the entire amount with Respondent No.2 within a period of three weeks from today, failing which the said amount will carry interest @ 6% per annum from 18.12.2020, when the amount was released by the Second Respondent within 48 hours of the passing of the order. After the amount is deposited, the entire amount shall immediately be forwarded by Respondent no.2, to the Civil Court of original jurisdiction in tune with the order dated 12.10.2020 passed under Section 3-H(4).

9. *Though the Standing counsel has requested us not to issue a direction for initiating disciplinary proceedings against the Second Respondent since he has now been transferred, we find the following factors to be glaring:-*

A) On 12.10.2020, the Second Respondent passes an order under section 3-H(4), referring the dispute to the Civil Court.

B) The total amount of Rs.1,99,28,739/- was supposed to be transmitted to the Civil Court, expeditiously. The Second Respondent retained the amount for 41 days, despite passing the order referring the dispute to the Civil Court and after signing it.

C) Thereafter, Respondent No.3 filed a review application on 23.11.2020. An order on the review application is passed on 16.12.2020 and within 48 hours, an amount of Rs.1,86,68,228/- is disbursed to Respondent No.3, by taking an undertaking.

10. *As such, on the one hand, the Second Respondent does not transfer the amount to the Civil Court for 41 days*

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and, on the other hand, disburses a huge sum of Rs.1,86,68,228/- to Respondent No.3, within 48 hours. We, therefore, direct the Chief Secretary of the State of Maharashtra not to allot any matter with regard to land acquisition and payment of compensation under any statute, to Respondent No.2 namely Sunil Yadav.

11. We direct the learned Registrar Judicial of this Court, to officially place a copy of this order before the Chief Secretary of the State of Maharashtra for compliance. A compliance report from the office of the Chief Secretary shall be placed before us on 11th March, 2024.”

4. The learned Advocate for the Applicant fairly submits that the Applicant did not have any power to review his own order. He further draws our attention to paragraph No.2 of his Application, stating therein that, he has sincere regret and deep remorse for the error committed in discharging his official duties. He further submits that, unknowingly, he passed the questionable order, reviewing his earlier order and disbursed the money.

5. As recorded in paragraph No.9 of our order dated 12/02/2024, when there is no power to review an order, no authority would vest in Officer to review the order even if the

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parties allegedly consent to the same and appear hand in hand before such authority.

6. It is noteworthy that the Applicant had passed an order dated 12/10/2020, under Section 3-H(4), referring the dispute to the Civil Court with original jurisdiction, since he noticed a dispute between the parties. The amount of Rs.1,99,28,739/- was supposed to be deposited with the Civil Court. For 41 days, the Applicant did not part with the money, purportedly for the reason emerging from a communication addressed by him to the Civil Court, dated 29/10/2020, copy of which tendered across the bar and which is marked as 'X-2' for identification. The Applicant had written to the District and Sessions Judge, Latur, requesting for guidance as regards the procedure by which, the amount can be transferred to the said Civil Court with original jurisdiction. It is, thereafter, that Suryakant (Respondent No.4 herein), filed a Review Application on 23/11/2020 and the present Applicant reviewed his order on 16/12/2020 and handed over Rs.1,86,68,228/- to Suryakant, by taking an undertaking.

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7. Shri. Venjane, the learned Advocate for the Petitioner in the Writ Petition, submits that the ground for review is legally non-existent in the light of **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**. Moreover, he submits that the original Petitioner, namely, Ram Dnyanoba Bastapure had vehemently opposed the Review Petition by filing a written objection and the Applicant Shri. Sunil Vitthalrao Yadav has made an incorrect recording in the order that, Ram Dnyanoba Bastapure had orally consented to the review, though he had objected in the written statement. Shri. Venjane, therefore, submits that, the conduct of Sunil Vitthalrao Yadav is further aggravated by this act of making a dishonest recording and, hence, the Application deserves to be rejected.

8. We are of the view that the request of the Applicant could be considered sympathetically, only for the reason that, he

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has superannuated, and he has stated in his affidavit dated 26/06/2024 (X-1), as well as in the Civil Application, that he is praying for mercy with folded his hands.

9. Shri. Thombre, the learned Advocate representing the Applicant, submits on instructions from the Applicant who is present in the Court, that, to show his bona fides and to express his remorse and regret, he is willing to deposit Rs.50,000/- in this Court, to be utilized for any noble cause. He further submits that the Applicant has never been issued with any show cause notice or charge-sheet, much less, suffered any disciplinary proceeding any time in his service career. He, therefore, has urged us to show magnanimity and pardon the Applicant, now that he has superannuated and who has expressed his remorse and regret unequivocally in application, as well as in the affidavit.

10. On this contention, the learned Advocate Shri. Venjane representing the original Petitioner submits that, as the Petitioner is a 76 years old citizen, who is still waiting for the compensation amount, at least Rs. 25,000/- from the cost amount, be given to him by way of compensation.

11. It is in the light of the above statements, that we are taking a sympathetic view and we are recalling only the direction issued to the Chief Secretary of the State of Maharashtra to initiate disciplinary proceeding against Applicant Shri. Sunil Vitthalrao Yadav, set out in our order dated 12/02/2024. **This Civil Application is partly allowed**, only to this extent, though we maintain the observations in paragraph 6 that, this would have been a fit case for initiating the disciplinary proceeding against the said Applicant. We call upon the Chief Secretary to drop the disciplinary proceedings since they have been initiated pursuant to the order of this Court after the superannuation of the Applicant.

12. **This Civil Application is disposed off** in the above terms. The statement of the Applicant that he will deposit Rs.50,000/- in this Court, is accepted. The amount will be deposited on or before 31/07/2024, in the Registry of this Court. The original Petitioner Shri. Ram Dnyanoba Bastapure is permitted to withdraw the amount of Rs.25,000/- under identification of his learned Advocate. The remainder amount be donated to an Orphanage Home i.e. "Shantivan", Arvi, Tq. Shirur

Kasar, District Beed. (Bank Details:- “Bhavani Vidhyarthi Kalyan Pratishthan, Arvi”, State Bank of India, Branch Shirur (Kasar), Account No.33446000963, IFSC Code : SBIN0005995)

13. Consequentially, if the retiral benefits of the Applicant are due and pending, the concerned Authorities are at liberty to initiate appropriate steps.

14. If the amount as stated above is not deposited by the Applicant Sunil Vitthalrao Yadav, this order shall stand re-called. The Employer/Department of the Applicant would first verify the compliance of this order, and thereafter proceed to clear his retiral dues.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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