



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

**REVIEW APPLICATION (CIVIL) NO. 242 OF 2024
IN WP/10223/2022**

**CHAGAN MANKU BADGUJAR
VERSUS
BHAGWAN GAJANAN BADGUJAR AND OTHERS**

Mr. L. V. Sangit, Advocate for the applicant

CORAM : R. M. JOSHI, J.

DATE : 16th OCTOBER, 2024

PER COURT :-

1. Original petitioner has sought review of the order dated 8th July, 2024 passed by this Court in Writ Petition No. 10223 of 2022.

2. The facts which led to the filing of the petition indicate that proceedings were filed under Section 143 of Maharashtra Land Revenue Code and order was passed by Tahasildar which was confirmed by the Collector. Against the said order suit came to be filed by respondents bearing R.C.S. No. 217 of 2021. In the said proceeding two applications i.e. Exhibit 6 by respondents for temporary injunction and Exhibit 31 by petitioner (original defendant) claiming that the order passed by Tahasildar is already executed and seeking rejection of Exhibit 6, were moved. Learned Civil Judge, Junior Division passed common order on these applications against the present petitioner. This order was

unsuccessfully challenged in Misc. Civil Appeal No. 49 of 2021 before the District Court. Against this order, petition was filed by original defendant. After hearing both sides impugned order is passed by this Court.

3. Learned counsel for the applicant/original petitioner submits that there is an error committed by this Court in recording findings in paragraph no.5 of the judgment. It is his submission that there was no direction to provide way from gut no. 49 and hence, there is no question of this fact to have been considered by Tahasildar while passing subsequent order. It is also submitted that as of today, there a standing crop cultivated by the petitioner in his land and for want of excess to his agricultural land, he is unable to harvest the said crop. It is further submitted that there was interim relief granted by this Court to the order impugned in this writ petition in the year 2022 and hence, it was obligatory for this Court to continue order of stay with a direction to the Trial Court to decide the suit at earliest.

4. Section 114 r/w Order 47 of the Code of Civil Procedure provides that essentially in three circumstances review of any order is permissible. If there is any new or important evidence is discovered, which was not within knowledge of party or there is error apparent on the face of record but not on erroneous decision and lastly any other

sufficient ground analogous to the rules, review of any order is allowed. Keeping in mind said provisions if the contention of the learned counsel for the petitioner is considered, then it is not his case that there is any apparent error on the face of record in order to correct the same. In so far as observations made in paragraph no.5 of the impugned order is concerned, there is no dispute about that fact that in the previous order passed by Tahasildar, the way was granted from gut no. 35, 36, 37 and 40. However, while passing the order after remand of the said proceeding by the Collector, Tahasildar has not taken into consideration the said order and only thing which is considered is the distance. The observations made in the paragraph no.5 of the order impugned are in consonance with the said facts on record and as such no error can be said to be there on the face of record.

5. Merely because inconvenience is caused to the petitioner and that he is unable to harvest the crop, the same cannot become a ground for review of the order. In so far as the contention of the learned counsel for the petitioner about the continuation of stay for a period of two years, in paragraph no. 8 of the impugned judgment the said aspect has been clearly dealt with and rejected. Needles to record that the order impugned in writ petition was passed at interim stage and not a final order. Hence, it is always open for the applicant to substantiate his case

before Civil Court during trial of suit.

6. Considering the afore stated facts as well as grounds for the challenge to the impugned judgment, this Court finds no merit in the application.

7. It is noticed that the provisions of review are misused more often than not. No doubt if the order passed by any Court is erroneous as per the contention of the party, the remedy available for him is to challenge the same before the superior Court. This Court is of the view that filing of review herein this cases is nothing but abuse of process of law. Hence, application is dismissed with cost of Rs.5,000/-. Cost is payable to the Government Cancer Hospital, Chhatrapati Sambhajinagar within 4 weeks.

(R. M. JOSHI, J.)

ssp