



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 19 OF 2024
IN
WRIT PETITION NO. 7413 OF 2016

Tulshiram s/o Sidram Jadhav,
Age 63 years, Occ. Agriculture,
R/o. Shukrawar Peth, Beed,
Tq. & Dist. Beed.

... Petitioner

VERSUS

- 1) The State of Maharashtra,
Through Chief Secretary,
Mantralaya Mumbai-32.
- 2) The Divisional Commissioner,
Aurangabad Division,
Aurangabad.
- 3) The Collector, Beed,
District Beed.
- 4) The Executive Engineer,
P.W.D. Department, Beed,
Dist. Beed.
- 5) Sub-Divisional Officer,
P.W.D. Department, Beed,
Dist. Beed.
- 6) Special Land Acquisition Officer,
Beed, District Beed.
- 7) Zilla Parishad, Beed,
Through its Chief Executive Officer,
Beed, District Beed

... Respondents

...

Advocate for Petitioner : Mr. G.K. Naik Thigale
A.G.P. for Respondent nos. 1 to 6 : Mr. PP Dawalkar
Advocate for Respondent no. 7 : Mr. P.D. Suryawanshi

CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**
RESERVED ON : **14.06.2024**
PRONOUNCED ON : **27.06.2024**

ORDER : (PER : MANGESH S. PATIL, J.)

This is an application seeking review of the judgment and order passed by a division bench of this Court, dated 31.07.2017, whereby, the petition was dismissed essentially on the ground of delay and laches, holding that the petitioner was not possessing any record and had also suppressed the fact that his land was in possession of the government from 1972 onwards, being used as a road and subsequently made over to the Zilla Parishad for maintenance and repair till 1996 and thereafter to the Public Works Department of the State Government, and he was not entitled to any relief.

2. In substance, the petitioner has been alleging that his land bearing Survey No. 98 of village Taraf Bobade, Beed, to the extent of 76-Are was in his possession till 2010 and was utilized by the State without undertaking any process of land acquisition for construction of a road Beed-Mahalas-Jawala-Pimpalner. It was pointed out that in order to lay down the road, acquisition process was in fact conducted in respect of the adjoining owners. However, in spite of his land having been usurped, he was never paid any compensation. It was his stand that he got the knowledge of the acquisition proceeding having been undertaken when the adjoining land owners received notices for receiving compensation.

3. The petitioner had preferred Writ Petition No. 7203/2014 seeking a direction to the authorities for initiating acquisition proceeding. The Collector, Beed, filed his affidavit in reply and after hearing both the sides, by the order dated 04.02.2016, the writ petition was disposed of by permitting the petitioner to tender a representation to the Collector within three weeks and directing the Collector to take appropriate decision, in

accordance with law and policy of the State. The Collector, in his affidavit had admitted that some land acquisition proposal in respect of the same road was undertaken by the Public Works Department and if a proposal was received for acquisition of petitioner's land from the Executive Engineer of the P.W.D., necessary steps would be undertaken for acquisition.

4. Pursuant to such directions of the Court, the Collector Beed, by his order dated 03.06.2016 rejected the petitioner's application/representation accepting the stand of the Public Works Department that in fact the road was in existence since 1972, till 1996 it was being maintained by the Zilla Parishad, and since thereafter the Public Works Department was maintaining it. Thus, the road was laid around 40 years back. The petitioner had never made any grievance or had never claimed any compensation for more than 40 years.

5. The petition, in which the order under review was passed, was filed seeking a writ of mandamus, directing the authorities to undertake the process of acquisition, and in the alternative, seeking a declaration that the process of acquisition had lapsed as per the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and to set aside the order of the Collector, dated 30.06.2016.

6. The learned advocate Mr. Thigale for the petitioner would submit that since the High Court is a Court of record, the power of undertaking review inheres in it under Article 215 of the Constitution of India and is not circumscribed by the provisions of Section 114 or Order XLVII of the Code of Civil Procedure. He would place reliance on the decisions :

- (1) *Commissioner of Income Tax, Guwahati-I vs. Meghalaya Steels Ltd., (2015) 17 Supreme Court Cases, 647*
- (2) *Board of Control For Cricket in India and another vs. Tetaji Cricket; (2005) 4 Supreme Court Cases ,741*

**(3) *M.M. Thomas Vs. State of Kerala and another;*
(2000) 1 Supreme Court Cases, 666.**

He would therefore submit that this Court can undertake a review without harbouring any feeling of being circumscribed by Section 114 and Order XLVII of the Code of Civil Procedure *ex debito justitiae*.

7. On facts, Mr. Thigale would submit that the Court had erred in expecting the petitioner to discharge a negative burden. He could not have been expected to possess any record. It was for the State to demonstrate as to how his private property was taken over that too by following due process of law. The Court had factually erred in concluding that till the year 2008-2009, the petitioner had never raised any objection, and his petition was not maintainable for delay and laches. To buttress his submissions, he would place reliance on the decisions in the following matters :

- (1) *Tukaram Kana Joshi and others Vs. Maharashtra Industrial Development Corporation and others;*
(2013) 1 Supreme Court Cases, 353.**
- (2) *Pradyumna Mukund Kokil Vs. State of Maharashtra and others* (2015) 6 Supreme Court Cases, 406.**
- (3) *D.B. Basnett (dead) through Legal representatives Vs. Collector, East District Gangtok, Sikkim and others;*
(2020) 4 Supreme Court Cases, 572**
- (4) *Sukh Dutta Ratra and another Vs. State of Himachal Pradesh and others;* (2022) 7 Supreme Court Cases, 508.**
- (5) *Vidya Devi Vs. State of Himachal Pradesh and others;*
(2020) 2 Supreme Court Cases, 569.**

8. Per contra, the learned A.G.P, would support the order. He would submit that a review cannot be heard on the lines the appeals are heard. The attempt of the petitioner is nothing but an appeal in disguise. If at all the petitioner was not satisfied with the judgment and order, the option was

always open for him to challenge it before the Supreme Court. The Court had correctly demonstrated as to how the road was in existence since 1972 and, was initially with the Zilla Parishad till the year 1996 for maintenance and subsequently with the Public Works Department. It had also demonstrated as to how the petitioner had never made any grievance till the year 2009 and was still seeking assistance of the Court. After scanning the record meticulously and by meeting all the arguments of the learned advocate for the petitioner, who was the same i.e., Mr. Thigale, this Court had dismissed the petition by a comprehensive order. Though this Court has inherent powers under Article 215 of the Constitution of India, those cannot be exercised arbitrarily and indiscriminately. When this Court had assigned sufficient reasons for dismissing the petition, it would be an unending process if still this Court undertakes review. He would submit that there is no sufficient and cogent reason for reconsidering the matter on merits.

9. The learned advocate for respondent no. 7 would submit that it was not a party to the writ petition and could not have been arrayed in the review application.

10. One need not delve elaborately as far as the powers of the High Court under Article 215 of the Constitution of India are concerned. The decisions cited by learned advocate Mr. Thigale sufficiently deal with that aspect and we merely need to bear those in mind.

11. However, it would be appropriate to observe that reliance of Mr. Thigale to buttress his submission that the powers of this Court being a court of record are not circumscribed by the provisions of Section 114 and Order XLVII of the Code of Civil Procedure, by citing the decision in the matter of *Meghalaya Steels, BCCI and M.M. Thomas (supra)*, in our considered view, is misplaced or rather out of context.

12. *Meghalaya Steels* was a matter, wherein, the issue before the Supreme Court was as to whether the High Court had power to undertake a

review of the judgment rendered in an appeal under Section 260-A of the Income Tax Act, particularly in the light of sub Section 7, whereby, only those provisions of the Code of Civil Procedure could be looked into for the purpose of deciding an appeal under Section 260-A, as were relevant to the disposal of appeals and, the review provision contained under the Code of Civil Procedure was not so referred to in it. It is in this context that it was held that the High Court, being a court of record, had power and inherent jurisdiction under Articles 215 and 226 to correct its mistake. The High Court while undertaking a review had observed that the order under review was passed ignoring that a mandatory provision contained in the Income Tax Act of framing of appropriate substantial questions and without hearing the parties on those substantial questions. As can be gathered, in such a peculiar fact situation, the Supreme Court had observed that the High Court, even in the absence of power of review under the Income Tax Act and the provision of review contained in the Code of Civil Procedure was not available, had power and jurisdiction to correct the mistake in deciding the appeal by resorting to Articles 215 and 226 of the Constitution.

13. In the matter of **BCCI (supra)**, in fact, the parameters of Section 114 and Order XLVII of the Code of Civil Procedure were applied, and it was held that the High Court had powers to correct the error or mistake.

14. In the matter of **M.M. Thomas (supra)**, though there was a reference to Article 215 of the Constitution of India, it was held that the High Court has not only the power but even duty to correct any error apparent on the face of record. The appellant therein was seeking exemption under a particular section of law in respect of the vesting of private forest in the State. The Forest Tribunal had dismissed his petition, and in appeal, the High Court had allowed the petition on the basis of some other provision, even though no claim was made by the appellant thereunder and there was no evidence led in that regard.

Again, the High Court's power to undertake a review was discussed in the context and by laying down the parameters of Section 114 and Order XLVII of the Code of Civil Procedure.

15. It is thus apparent that it would be quite a bold statement to say that these decisions cited by Mr. Thigale support his arguments that the powers of review to be undertaken by the High Court are not circumscribed by the provisions of Section 114 and Order XLVII of the Code of Civil Procedure in view of the fact that it is a court of record by referring to Article 215.

16. With this understanding of law, we proceed to determine as to if the petitioner has been able to make out any ground for undertaking a review, as laid down under Section 114 and Order XLVII of the Code of Civil Procedure and the parameters discussed in catena of judgments. It is possible only if we reach to a conclusion that there is any error apparent on the face of the record or some new material that was not available to the petitioner has been discovered subsequently, or if there is any other sufficient cause. In the matter of **BCCI (supra)** even the words "sufficient cause" used in Section 114 have been interpreted to mean that the words will have to be interpreted *ejusdem generis* with the other two grounds.

17. A careful perusal of the judgment and order under review would clearly demonstrate that the petition was dismissed by considering all the aspects as are being argued before us even now. It was noted that the road in question, for which the petitioner's land was allegedly used, was in the possession of the Zilla Parishad right from the year 1972 up to the year 1996. By a government resolution dated 18.03.1996, it was made over to the Public Works Department of the State for upkeep and maintenance. The Public Works Department was not having any record to demonstrate whether any land was taken over for the construction of the road and any compensation was paid. This Court demonstrated as to how, from the record it was revealed that the subject land was taken over way back in the year

1972, when the road was laid and constructed by handing it over to Zilla Parishad, Beed. In substance, this Court had objectively assessed the material to reach a conclusion that right from 1972 till the year 2009 the road was in existence, and the petitioner had never raised any grievance during that time.

18. It was also observed that the petitioner had in fact suppressed the fact in his petition that actually his land was in possession of the government since 1972, and therefore he was not entitled to any assistance from the Court. Pertinently, it is not the stand of the petitioner and even his learned advocate Mr. Thigale that the observations of this Court in the order under review were factually incorrect.

19. The whole emphasis of the petitioner has been on the decisions in the matters of *Tukaram Kana Joshi*, *Pradyumna Mukund Kokil*, *D.B. Basnett and Sukh Dutt Ratra (supra)* to demonstrate that this Court could not have dismissed the petition on the ground of delay and laches by observing that the petitioner's land was put to use way back in the year 1972 and he had never made any complaint about it till the year 2009. We are afraid, it would be like sitting in appeal now to reverse the observations and conclusions drawn in the order under review by referring to these decisions, some of which were holding the field even before the petitioner's petition was dismissed by the judgment under review.

20. Besides, as is pointed out herein above, in fact, the petition was not dismissed only on the ground of delay and laches but by also recording the conduct of the petitioner in not disclosing in the petition the fact that the road was in existence since the year 1972.

21. Under these circumstances, in our considered view, the application under review is devoid of any ground which would enable this Court to undertake a review. We cannot sit in appeal and examine correctness or otherwise of the judgment.

22. The Review Application is dismissed.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-