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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.12 OF 2024
IN
WRIT PETITION NO. 8957 OF 2023

Abhay Ramrao Pawar
Age -52 years, Occ - Agriculture
R/o Pimpri Raja, Aurangabad
District - Aurangabad

APPLICANT

VERSUS

1. Surendrakumar Chunnilal Bhandari
Age - 78 Years, Occ - Agriculture
R/o Pimpri Raja, Aurangabad
Currently R/o Plot No. 74, Sector -A
N-1, CIDCO, Aurangabad
2. Shikshan Prasarak Mandal,
Pimpri Raja,
Through its President

RESPONDENTS

.....
Mr. Arvind Deshmukh h/f Mr. S.V. Natu, Advocate for applicant
Mr. V. S. Kadam, Advocate for respondent No.1
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 14th JUNE, 2024
PRONOUNCED ON : 26th JUNE, 2024

ORDER :

1. This application seeks review of the judgment and order dated 14th September, 2023 passed in Writ Petition No. 8957 of 2023, by which writ petition challenging judgment and order dated 20th September, 2022 passed by learned Joint Charity Commissioner, Aurangabad, in Appeal No. 101 of 2016, thereby

accepting change report, is dismissed.

2. Heard learned advocate for applicant – petitioner and learned advocate for respondent No.1.

3. Learned advocate for the applicant, by pointing out Rule (2) (a) of the Rules and Regulations of the Trust, submits that applicant – original petitioner, being legal heir of founder trustee Sakharam Patil Pawar, is entitled to continue as a Trustee, by way of succession / hereditary mode. According to learned advocate, this aspect was lost sight of while making observations in paragraph No.10 of the order under review, wherein *locus* of the petitioner – applicant, is held to be rightly questioned by the respondents on the ground that, applicant – petitioner is not member of the Trust and he is in no way concerned with the Trust. He further submits that in view of clause 2 (f) of the Rules and Regulations of the Trust, vacancies which are fallen vacant, can be filled in, by the trustees and, therefore, at the most 6 trustees could have been appointed, however, 10 more trustees were selected, which is not permissible as per the rules.

4. Per contra, learned advocate for respondent No.1 submits that writ petition is not dismissed solely on the ground that applicant – petitioner had no *locus* to file the writ petition. He pointed out earlier paragraphs of the order under review,

wherein, after considering merits the writ petition is dismissed. He further submits that, for availing membership of the Trust, as per succession / hereditary mode, the successor has to apply to the Managing Board of the Trust for membership under that mode. He submits that, Ramrao Sakharampant Pawar has three sons and, therefore, unless and until applicant - petitioner prefers application to the Managing Board of the Trust for membership by way of succession / hereditary mode, by annexing therewith no objection from his brothers to appoint him trustee by succession, he cannot claim to be a trustee, by succession, as of right. He further submits that if applicant - petitioner intends to avail the membership, by way of succession / hereditary mode, he has to apply to the Managing Board along with no objection from his brothers. He further submits that all the arguments, which are now being canvassed, were already advanced at the time of hearing of the writ petition and no case is made out by the applicant - petitioner for review.

5. Observation, that applicant - petitioner has no *locus* to challenge decision in appeal, is made in the context that he was not party to the proceedings before Joint Charity Commissioner. Apart from this, by assigning reasons, applicant - petitioner's contentions are rejected while dismissing the writ petition.

6. All the contentions, which are now advanced, were advanced and were considered and rejected while dismissing the writ petition.

7. No ground, provided under Order 47, Rule 1 of the Civil Procedure Code, is made out by the applicant, in the review petition. The applicant has failed to point out any error apparent on the face of record, which has resulted into miscarriage of justice, hence, this Court is not inclined to exercise review jurisdiction.

8. The Apex Court, in **“Kamlesh Verma Vs. Mayawati and Others”** reported in **(2013) 8 SCC 320** , has held,:

“19. 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 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.”

9. In **“State of West Bengal and Others Vs. Kamal Sengupta and Another”** reported in **(2008) 8 SCC 612** the Supreme Court has observed;

“22. 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 record for the purpose of Order 47 Rule 1 CPC 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.”

10. No case is made out by the applicant petitioner to review the order passed in Writ Petition No. 8957 of 2023. Review Application being devoid of merit, is dismissed.-

11. Applicant may adopt appropriate procedure in applying for membership of the Trust by succession / hereditary mode.

**[NITIN B. SURYAWANSHI]
JUDGE**