



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**REVIEW PETITION NO. 27 OF 2024**  
**IN**  
**WRIT PETITION NO. 8567 OF 2023**

Abdul Hamid Khan Matwan.

...Petitioner.

**Versus**

M/s. Buildbrick Builders & Developers  
and Others.

...Respondents.

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*Mr. Vaibhav Parashurami i/b Ms. Apoorva L. Thakare for the Petitioner.*  
*Mr. R. S. Datar i/b Ms. Druti Datar for the Respondent no.1.*

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**Coram : Sharmila U. Deshmukh, J.**

**Date : April 30, 2024.**

**ORDER:**

1. Review petition has been filed seeking review of the order dated 17<sup>th</sup> January 2024 by which the petition filed at the instance of the Respondent Nos.1 and 2 herein came to be allowed and the order of the Revisional authority dated 23<sup>rd</sup> June, 2023 passed under the Mamlatdar's Court Act, 1906 in favour of the Review Petitioner came to be set aside.

2. Facts of the case are that by order dated 23<sup>rd</sup> June 2023 the Revision Application filed by the Review Petitioner against the order

of Tahsildar rejecting the application filed under Section 5 of the Mamlatdar's Court Act, 1906 came to be allowed. The Review Petitioners are the owners of land bearing Survey No.75/2 and Survey No.76 whereas the Respondent Nos.1 and 2 are owners of land bearing Survey No. 65 Hissa No.3. The properties are adjacent to each other and the Respondent Nos 1 and 2 were granted development rights and development plans were sanctioned by the Thane Municipal Corporation. On 5<sup>th</sup> August 2021, the Review Petitioners filed an application before the Tahsildar claiming access road through Survey No. 65/3 as and by way of approach road claiming that the approach road has been obstructed by the Respondent Nos 1 and 2. Based on the inspection conducted by the Circle Officer, it was opined that the Review Petitioner presently does not have any approach road and previously there was 65.9 meters approach road. There were civil proceedings qua the property of Review Petitioner and considering the same, Tahsildar rejected the application, which order came to be set aside by the Revisional Authority and Respondent Nos 1 and 2 were directed to remove the impediment on the access road.

**3.** By way of Writ Petition No.8567 of 2023 the order of Revisional Authority came to be challenged and this Court vide order dated 17<sup>th</sup> January, 2024 after hearing the parties and after taking into

consideration the provisions of Section 5 of the Mamlatdar's Court Act, 1906 held that even if the land of review Petitioner is not converted into non-agricultural use, there is no material produced on record to demonstrate that there was any crop cultivation and as such Section 5 of the Mamlatdar's Court Act, 1906 meant for the purpose of protection of the lands used for agricultural purpose and to remove any obstruction caused to the use or access of the said land was not a remedy available to the Review Petitioner. It was further held by this Court that the report of circle officer based on which the revisional authority has set aside the order of Tahsildar is based on the visual inspection of the property and there is no material to demonstrate the existence of the access road through the property of the Respondent No.1 and particularly a road admeasuring 65.9 meters. This Court further held that the remedy even if the plot is land-locked is not under the Mamlatdar's Court Act, 1906 and the liberty was granted to adopt all appropriate proceedings in the appropriate forum.

**4.** By present review petition, the order of 17<sup>th</sup> January 2024 is sought to be reviewed.

**5.** Heard Mr. Parashurami, learned counsel appearing for the Review Petitioner and Mr. Datar, learned counsel appearing for the

Respondent Nos 1 and 2.

**6.** Learned counsel appearing for the Review Petitioner would submit that there is an error apparent on the face of record which is demonstrable from the recitals in the sale deeds which show that the land of the review Petitioner has been sold along with the right of way. He submits that this Court has further held that there is no crop cultivation whereas the 7/12 extracts of year 2010 in respect of Survey No.75/2 annexed to the sale deed shows *Kaju* and *Sitaphal* cultivation on the said land. He would further submit that page Nos. 113 and 114 of the Writ Petition compilation contains the 7/12 extracts. He would further submit that the page No. 51 of the Writ Petition compilation shows the actual existing road and trees standing thereon.

**7.** *Per contra* Mr. Datar, learned counsel appearing for the Respondent Nos 1 and 2 would submit that after proper consideration and hearing the arguments of both the sides, the order under review has been passed. He submits that there is no error apparent on the face of record and as such the power under Order 47 Rule 1 of the Code of Civil Procedure, 1908 cannot be exercised.

**8.** Considered the submissions and perused the record.

9. Before proceeding further it would be relevant to reproduce the Order 47 Rule 1 of the Code of Civil Procedure, 1908 (for short, "CPC"), providing for review of judgment, which reads thus:

**"1. Application for review of judgment.—** (1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

Explanation.— The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

**10.** In the instant case, review is sought on the ground of error apparent on the face of record. It is well settled that an erroneous decision cannot be reheard and corrected in review jurisdiction. The review jurisdiction is extremely limited and is not an appeal in disguise. While passing the order dated 17<sup>th</sup> January 2024, the Petitioners as well as the Respondents were heard and thereafter detailed order has been passed. The submissions which are now sought to be advanced by learned counsel appearing for the review Petitioner were dealt with by this Court and it has been specifically held that even if the land of the Review Petitioner is not converted into non agricultural use, there is no material produced on record to demonstrate that there was any crop cultivation on his property. The obvious reference is to the relevant year when the access road is claimed and not to extracts prior to 14-15 years.

**11.** It is well settled that if the error has to be fished out by a process of reasoning, the review jurisdiction is not available. In the present case, what is sought to be contended is that the sale deed as well as the material on record should be re-appreciated by this Court to arrive at a finding that there was crop cultivation by the Review Petitioner. To accept the said submission would amount to practically re-hearing of the Petition. The submissions of learned counsel

appearing for the Review Petitioner would at the most render the decision dated 17<sup>th</sup> January 2024 an erroneous decision which can be subject matter of challenge before the higher forum. I am therefore not inclined to exercise the review jurisdiction vested under Order 47 Rule 1 of the Code of Civil Procedure, 1908.

**12.** In the light of above, there is no case for review as no error apparent on the face of record is demonstrated. Review petition stands dismissed.

**[Sharmila U. Deshmukh, J.]**