

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.2 OF 2024
IN
SECOND APPEAL NO.845 OF 2022

Shrimant Gayatridevi Bhagwantrao Pant ...Petitioners
Pratinidhi & Ors.

Versus

The Chief Officer, Satara Municipal Council, ...Respondent
Kesarkar Peth, Satara

Mr. Yuvraj Narvankar a/w. Ms. Raufa Shaikh, Advocate, for the
Petitioner.

Mr. Kayval P. Shah, Advocate, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.
DATED : 14th NOVEMBER 2024

P. C.:

1. Heard Mr. Narvankar, learned Counsel appearing for the
Petitioner and Mr. Shah, learned Counsel appearing for the
Respondent.

2. By order dated 7th January 2023, this Court admitted the
Second Appeal No. 845 of 2022 on the substantial question of law
framed in the said order. The said order reads as under:

“1. Heard Mr. Kayval Shah, learned counsel appearing for the Appellant.

2. The Second Appeal is admitted on the following substantial questions of law.

*i. Whether the Impugned Judgment and Decree of the learned First Appellate Court and learned Trial Court is contrary to the law laid down by the Supreme Court in (2015) 11 SCC 90 in the matter between **Prafulla C. Dave & Ors. vs. Municipal Commissioner & Ors.** particularly, in paragraph 21?”*

3. The Review Petition has been filed by the Respondents in the said Second Appeal No.845 of 2022 on the ground that no action has been taken by the original Appellant-Satara Municipal Council (“**Council**”) after service of notice dated 29th March 1997 issued under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (“**M RTP Act**”) and therefore, on 29th September 1997 right of “deemed lapsing” has been vested in the Petitioners. It is therefore, submitted that the judgment in the case of **Prafulla C. Dave & Ors. vs. Municipal Commissioner & Ors.** which has been mentioned in the substantial question of law will not apply.

4. On the contrary, it is the contention of Mr. Kayval Shah, learned Counsel appearing for the Respondent-Council that on 1st

February 1997, the Respondent-Council passed Resolution No.56 resolving to publish second draft development plan and accordingly, second draft development plan was published in the official gazette on 6th February 1997 inviting objections from public at large and objections were filed to the same by the present Petitioners on 25th March 1997 and thereafter notice under Section 127 of the MRTP Act was issued on 29th March 1997. He therefore, submitted that the substantial question of law is properly framed.

5. In any case, the Second Appeal is already admitted by order dated 7th January 2023 on the substantial question of law framed therein. Whether Second Appeal is to be allowed on the said substantial question of law is to be considered at the final hearing of the Second Appeal and not at this stage.

6. Mr. Shah, learned Counsel appearing for the Respondent-Council raised contention regarding maintainability of the Review Petition. He submitted that by order dated 7th January 2023, the Second Appeal is admitted by formulating substantial question of law and nothing is decided finally. There is substance in the said contention.

7. As per Order XLVII of the Code of Civil Procedure, 1908, the Review Petition can be entertained from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the decree was passed or order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. No case is made out for review of the order by which Second Appeal is admitted on the touchstone of these parameters.

8. If Second Appeal is admitted on the substantial question of law and review is sought of such order then, such reviews will be filed in every Second Appeal and instead of hearing Second Appeal finally, the Court will have to examine the contentions raised in the Review Petition. In the present case, Second Appeal is admitted on the substantial question of law as set out in order dated 7th January 2023. It is for the Respondent at the final hearing of the Second Appeal to raise the contentions which are sought to be raised in the Review Petition.

9. Accordingly, no case is made out for review of said order dated 7th January 2023. The Review Petition is dismissed with cost.

[MADHAV J. JAMDAR, J.]