

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3096 OF 2024.

TALLE
SHUBHAM
ASHOKRAO

Xrbia Developers Ltd.

...Petitioner.

Versus

State Of Maharashtra Thr Its Principal Secretary And ...Respondents.
Ors.

*Mr. Abhijit Kulkarni along with Mr. Chinmay Patil, Seoul Shah i/by Chinmay Patil
for the Petitioner.*

*Mr. S. D. Vyas, Addl GP along with Ms. A. A. Nadkarni AGP for the Respondent-
State.*

Mr. Vishal G Salvi along with Mr. Shubham Pawar for the Respondent No. 3.

Coram : Sharmila U. Deshmukh, J.

Date : November 22, 2024.

P. C. :

1. Heard.
2. By this Petition, the challenge is to the order dated 23rd January 2024, passed by the Collector reviewing the order granting NA permission dated 24th June 2014, 30th October 2014 and 29th March 2016.
3. Learned Counsel appearing for the Petitioner would submit that the Collector could not have exercised the power of review after the expiry of period of 90 days in view of Section 258 (1) (iv) of the Maharashtra Land Revenue Code, 1966 ("**MLRC**"). He would further submit that the order under review has been passed by taking into consideration the report of the District Superintendent of Land

Records stating that the demarcation is defective and has thus without the demarcation plan being set aside entered into the jurisdiction of the Survey Officer and on that basis cancelled the NA permission. He would further submit that findings of the Collector would not indicate that the ingredients for the purpose of review are satisfied in the present case. He submits that there is dispute pending between the Respondent No. 3 and the present Petitioner in the Civil Court and the Complaint had been filed by the Respondent No. 3 based on which the order came to be review after a period of almost 10 year which is impermissible. He has taken this Court in detail through the findings of the Collector and would submit that there are no reasoned findings to support the order of review, apart from the fact that the same was not permissible after expiry of the period of 90 days.

4. *Per contra*, learned Counsel appearing for the Respondent No. 3 would submit that the Application came to be filed as there was a defect in the demarcation plan and in respect of which report was submitted by the District Superintendent of Land Records. He would further submit that though the period of 90 days has expired, the delay could be condoned by the Collector and therefore after consideration of necessary material, the delay has been condoned.

5. Upon a query by this Court whether any Application for condonation of delay was filed and whether there is any finding

condoning the delay he would fairly concede that neither an Application for condonation of delay was filed nor the delay has been condoned in the present case.

6. Considered the submissions and perused the record.

7. The provisions of Section 258 of MLRC which deals with the review of order provides that no order affecting any question of right between private persons shall be reviewed except on an application of party to the proceedings and no such Application for review shall be entertained unless it is made within 90 days from the passing of the order. Sub Section 2 of Section 48 of MLRC sets out the specific ground on which the order can be revoked which are the discovery of new matter or evidence, mistake or error apparent on the face of record and for other sufficient reason. For the purpose of reviewing the order, firstly the jurisdiction should have been exercised within period of 90 days which admittedly has not been done in the present case. The order of grant of NA permission was passed in the year 2014 and the revised NA in the year 2016 and the order has been impugned in the year 2024 upon an application which has been filed in the year 2018. The Collector without noticing the provisions of the Act which provides for the Review Application to be filed within 90 days has proceeded without an Application for condonation of delay and without condoning the delay to review the order in exercise of powers

under Section 258. This is not to be interpreted to mean that under Section 258 of MLRC there is power vested in the Collector to condone the delay, if an Application for condonation of delay is filed, as plain reading of Section 258 (1) (iv) of MLRC does not indicate that the Collector is invested with the power to condone the delay beyond the period of 90 days.

8. As far as the findings of the Collector for the purpose of reviewing the order of grant of NA permission is concerned, the Collector appears to have been swayed by the report filed by the District Superintendent of Land Records setting out that there was some defect in the demarcation and on the basis of report, the Collector has held that the measurement appears to be defective and has set aside the NA permission granted.

9. Mr Kulkarni, is right in submitting that by doing so, the Collector has infact entered into the arena of the Survey Officer's jurisdiction and without the demarcation plan being set aside by the District Superintendent of Land Records merely on the basis of the report that the measurement was defective could not have set aside the NA permission. It is necessary for the Collector to arrive at specific finding that there was an error apparent on the face of record or for any other sufficient reason that the order of grant of NA permission is required to be reviewed. Perusal of the order of the Collector would

indicate that the Collector has merely considered the report of the District Superintendent of Land Records and has accepted the same without any reasoned findings and has held the measurement to be defective.

10. In my view, the same cannot said to be sufficient compliance of sub Section (2) of Section 258 of MLRC and there has to be specific finding of an error apparent on the face of record or the order being reviewed for any other sufficient reason.

11. In light of the above, apart from the fact that the review jurisdiction could not have been exercised under Section 258 of MLRC after expiry of period of 90 days, the findings of the Collector did not satisfy the requirement of sub Section (2) of Section 258 of MLRC.

12. In light of the above, the impugned order dated 23rd January 2024, is hereby quashed and set aside. It also needs to be noted that the Application which was filed by the Respondent No. 3 when perused does not make out any case that the grant of NA permission suffers from error apparent on the face of record and on this ground also, the Petition is likely to succeed.

13. Resultantly, the impugned order dated 23rd January 2024, is hereby quashed and set aside. Petition is allowed in the above terms.

[Sharmila U. Deshmukh, J.]