

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 5 OF 2024

IN

FIRST APPEAL NO. 960 OF 2012

Yasin Abdul Gani Mansoori
Age 62 years, Occu: Business
Carrying on business in the name and
style of M/s. Diamond Mattresses on plot
bearing No. 317 CTS No.1753,
Sion-Trombay Road, (Opp. Diamond Garden),
Chembur, Mumbai – 400 071.

...Petitioner.

Versus

1. Brihanmumbai Municipal Corporation
Having their office at Mahapalika Marg,
Mumbai – 400 001.
2. The Asst. Municipal Commissioner,
M/West Ward, Brihanmumbai Municipal
Corporation, Sharad Acharya Marg,
Chembur, Mumbai – 400 071.

...Respondents.

WITH

REVIEW PETITION NO. 6 OF 2024

IN

FIRST APPEAL NO. 959 OF 2012.

Ramavtar Yadav
(since deceased through legal heirs and
representatives)
1a. Seema Ramavtar Yadav
Age: 56 years, Occu: Household
2. Sujender Ramavtar Yadav
Age : 40 years, Occu: Business
3. Sujata Ramavtar Yadav
Age : 35 years, Occu: Nil
Carrying on business in the name and style of
M/s. Janta Hotel Proprietor on plot bearing

No.317, C.T.S. No.1753, Sion-Trombay Road,]
(Opp. Diamond Garden), Chembur, Mumbai –]
400 071.] **...Petitioner.**

Versus

1. Brihanmumbai Municipal Corporation]
Having their office at Mahapalika Marg,]
Mumbai – 400 001.]
2. Asst. Municipal Commissioner,]
M/West Ward, Brihanmumbai Municipal]
Corporation, Sharad Acharya Marg,]
Chembur, Mumbai – 400 071.] **...Respondents.**

Mr. Pradeep J. Thorat and Ms. Aditi Naikare for Petitioner.

*Mr. Pradeep Patil and Mr. Drupad Patil i/b Ms. Pallavi Khare for Respondent-
B.M.C.*

Coram : Sharmila U. Deshmukh, J.

Reserved on : 24th October, 2024.

Pronounced on : 17th December, 2024.

Judgment :

1. By these Review Petitions, Review is sought of the common judgment and order dated 29th August, 2024 passed in First Appeal No. 960 of 2012 and First Appeal No. 959 of 2012 dismissing the appeals and confirming the judgment and decree passed by the City Civil Court.
2. First Appeal Nos. 959 and 960 of 2012 arose out of judgment and orders of dismissal of L.C. Suit No. 1774 of 2007 and L.C. Suit No. 1808 of 2007 filed in respect of Shop No.5 and Shop No.2 respectively stated to be situated on private land belonging to Hanuman Mandir Trust, challenging the orders passed by the Municipal Corporation under

Section 351 of the Mumbai Municipal Corporation Act, 1888 [for short, **“MMC Act”**]. Before this Court, both the Appeals were taken up for hearing together and common submissions were advanced. By common judgment and order dated 29th August, 2024, both Appeals came to be dismissed of which review is sought.

3. Mr. Thorat, learned counsel appearing for the Review Petitioners submits that this Court had framed specific point for determination as to whether the notice structure is required to be protected under the B.M.C. Policy Guidelines dated 25th February, 2004 and 20th March, 2017 framed for removing the bottleneck of Development Plan Road which was answered in Paragraphs 35 to 39 of the said Judgment. He submits that this Court considered the policy guidelines for removal of bottlenecks issued by the Corporation dated 25th February, 2004 and held that the policy protects only censused structure in the slum area and thus, these structures are not eligible for protection under the Bottleneck Policy dated 25th February, 2004. He submits that the said finding does not consider the eligibility criteria set out in Clause 4 of the Circular dated 25th February, 2004 which can be segregated in three categories. According to him, the first category covers the structures protected under the State Government Policy existing prior to 1st January, 1995, the second category covers commercial structures on private land as well as the State Government and the Central

Government lands in existence after 1st April, 1962 and the third category covers censused structure on 1st January, 1996 with photopass or without photopass from 1st January, 1996 to 1st January, 1995. He submits that the case of the Review Petitioners would fall in the second category and the only consideration is whether the commercial structure is in existence after 1st April, 1962 on private land. He submits that the structures are not required to be part of censused slum in view of Clause 5 of the Policy prescribing requisite documents for eligibility by referring to photopass which are only issued for residential structures. He submits that the second part of clause 5 provides for licenses issued pertaining to commercial structure and the only requirement in both these cases is that the structure have to be existing after 1st April, 1962. He submits that there is error apparent in the view taken by this Court as regards the application of the bottleneck policy only to slums and thus, the judgment requires to be reviewed.

4. He would further submit that this Court has erroneously recorded in Paragraph 33 of the judgment under review that nothing is pointed out to show the existence of the suit structure prior to 1st April, 1962 which is the subject matter of First Appeal No. 960 of 2012. He submits that as the appeals were heard together, common submissions were advanced even in respect of First Appeal No. 960 of

2012.

5. *Per contra* Mr. Patil learned counsel appearing for Respondent-Corporation would read the eligibility criteria set out in Category-B of Policy of 2004 in two parts, the first part to include the structures protected under the State Government Policy existing prior to 1.1.1995 including the structures after 1.1.1962 for commercial users on the private land, the State government and the Central Government and the second part to be the remaining portion of the eligibility criteria. He submits that the second part includes censused structure on 1st January, 1976 with photopass or without photopass and also from 1st January, 1976 to 1st January, 1995. He submits that the date 1st January, 1976 has relevance as the first census was held on 1st January, 1976, which is evidenced from the Government resolution of 16th May, 1996 which clearly states that it is in the year 1976 and thereafter, in the year 1980 and 1985 that the slums were censused and cut-off for their eligibility was held to be 1st January, 1995. He submits that Regulation 33(10) of Development Control Regulation, 2034 read with Section 36 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 [for short, ***“the Slums Act”***] were introduced to define the protected occupier. He submits that the preamble to the policy of 2004 makes reference to the Government Resolution wherein all the hutment dwellers whose names are

reflected in the electoral roll of 1st January, 1995 who continued to stay on such lands notified as slums are eligible for slum rehabilitation accommodation and therefore, the earlier circular of 11th February, 1999 was modified allowing the structure occupants/tenants to go vertically up so that the bottleneck is cleared and occupant is also benefitted and it is therefore, clear that the structure has to be part of the declared slum. He would further point out that the policy also refers to the methodology to be followed in Clause 2 which commences with preparation of priority list of bottlenecks and it is not shown that the petitioner's structure falls within that list of bottlenecks. He submits that the present case is case of road widening and not removal of bottleneck and therefore, the policy does not apply. He submits that there is no pleading as regards applicability of bottleneck policy before the Trial Court. He would further submit that the requirement for applicability of the bottleneck policy is that the structure should be declared as slum area under Section 4 of the Slums Act or Slum Rehabilitation Area under Section 3(c) of the Slums Act and should be censused structure and therefore, this Court has rightly held that the bottleneck policy would apply to an area declared as slum.

6. In rejoinder, Mr. Thorat would submit that in the written statement filed before the Trial Court, the Respondent-Corporation had averred that the structure is coming on the bottleneck of the

curvature of 'VN Purav Marg' which has to be cleared on priority basis. He would further submit that the notice issued under Section 351 of the MMC Act refers to the work of improvement and construction of 'V.N. Purav Marg' from 'Suman Nagar Junction' to 'Panjarpol Junction' to the sanctioned roadline of 36.6 metres by removing the encumbered structure/portion of the structure effected by the sanctioned roadline for road development. He submits that therefore, the finding of this Court in Paragraph 37 of the judgment under review that the provisions of Sections 297 to 301 of the MMC Act not being applicable is error apparent on face of record.

7. I have considered the submissions and minutely perused the judgment under Review.

8. Section 114 of the Code of Civil Procedure, 1908 which is the substantial provision dealing with the scope of review reads thus :

***"114. Review.**—Subject as aforesaid, any person considering himself aggrieved—*

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

9. The grounds which are available for filing Review Application against a Judgment have been set out in Order XLVII, Rule 1 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. Before adverting to the facts of present case, it will be profitable to refer to decision of Apex Court in case of **S. Madhusudan Reddy v. V. Narayana Reddy**¹. Conspectus of the various decisions noted by the Apex Court in the case of **S. Madhusudan Reddy Vs V. Narayana Reddy** (supra) indicates the following:

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a) Review of earlier order cannot be done unless the court is satisfied that the material error which is manifest on face of the order, would result in miscarriage of justice or undermine its soundness.

b) A review of judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.

c) An error that is not self evident and the one that has to be detected by process of reasoning, cannot be described as an error apparent on face of the record for the Court to exercise the powers of review. It must be an error of inadvertence.

d) In exercise of powers of review, it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an 'appeal in disguise'.

e) Review of earlier order cannot be done unless the court is satisfied that the material error which is manifest on face of the order, would result in miscarriage of justice or undermine its soundness.

f) The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two view on the subject is not a ground for review.

g) Error apparent on face of the proceedings is an error which is based on clear ignorance or disregard to the provisions of law.

h) Error apparent on face of record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature and it must be left to be determined judicially on the facts of each case.

i) Under the garb of filing review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

11. Coming to the present case, during the hearing of the First Appeals, in view of the submissions advanced regarding applicability of the bottleneck policy to the structures of the Review Petitioners, this

Court had framed specific point for determination and answered the same in paragraphs 37 to 39 of the Judgment under Review. After considering the policy of the year 2004 and the eligibility criteria contained therein, it was held that as per the policy, the protection is available only to structures existing prior to 1st January, 1995 which are protected under the State Government Policy and censused structures from 1st January, 1976 to 1st January, 1995. This Court held that as the Review Petitioner's structures are not shown to be part of declared slum and only survey has been carried out in the year 2000, the protection is not available.

12. The submissions raised by the Petitioners during the hearing of the Appeals regarding the bottleneck policy were considered and duly dealt with by this Court.

13. By the present Review Petition, the Review Petitioners seek to re-argue and re-agitate the issues which were considered and dealt with in the original judgment. Both parties have argued at length on the applicability of the bottleneck policy. The error which is required to be fished out by process of reasoning cannot be termed as error apparent on face of record. The error has to be patent error. It needs to be borne in mind that Review is not original hearing of the proceedings and it is not open for Review Court to re-hear and correct an erroneous decision as the remedy lies in approaching the higher forum against an

erroneous decision. The submissions canvassed by the Review Petitioners amounts to grounds of Appeal and this Court cannot sit in appeal over its own decision.

14. The contentions of Mr. Thorat are aimed at convincing this Court to substitute its view taken in the judgment under Review on the applicability of the bottleneck policy, which is impermissible in Review jurisdiction. Similarly, the Respondents seek to support the view taken by this Court by placing additional material which cannot be considered as Review is not re-hearing of the First Appeals.

15. As far as the submission that this Court has erroneously recorded that nothing is pointed out to show the existence of the suit structure prior to 1st April, 1962 which the subject matter of First Appeal No. 960 of 2012, the same is finding of fact and cannot be corrected in Review jurisdiction unless error apparent on face of record is demonstrated. The judgment under review clearly observes that both the Appeals were taken up for hearing together and common submissions were advanced in both the First Appeals.

16. In light of the above discussion, I find no grounds to review the Judgment and order dated 29th August, 2024. Review Petition No. 5 of 2024 and Review Petition No. 6 of 2024 stands dismissed.

[Sharmila U. Deshmukh, J.]

17. At this stage, request is made for extending the interim protection which was operating in favor of the Review Petitioner. Interim Protection is extended for a period of 8 weeks from today.

[Sharmila U. Deshmukh, J.]