



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 7674 OF 2018
IN WP/3621/2008**

Sukhwasi Bhagwandas Lal And Others
VERSUS
The State Of Maharashtra And Others

Mr. A. P. Bhandari h/f Mr. R. R. Sancheti, Advocate for Applicants
Mr. U. D. Gunale, Advocate for Respondent No. 3
Mr. S. P. Shah, Advocate for Respondent Nos. 2.1 and 2.2
Senior Advocate Mr. V. D. Sapkal i/b Mr. A. D. Khedkar, Advocate for
Respondent No. 8
Mr. K. N. Lokhande, AGP for Respondent/State

CORAM : R. M. JOSHI, J.

DATE : 22 July, 2025

PER COURT :-

1. By consent of both sides heard finally.
2. This is case wherein by filing present application challenging of the judgment dated 24.07.2009 passed in Writ Petition No. 3621/2008 by this Court is sought to be practically overruled from the same Court.
3. The facts which led to filing of this application need reference are narrated in brief as under :-

Applicants claim themselves to be the owners of the plots from the lay out sanctioned by the competent Authority i.e., Collector. During the

relevant time as the said land fell within the area outside jurisdiction of Municipal Corporation. The competent Authority sanctioned lay out and the said plots were sold to 158 persons. After the said area was brought within this jurisdictional limits of the Municipal Corporation, the original petitioner moved an application for change in the open spaces as prescribed in the said lay out. Since the Authorities below refused to exercise the said powers and allow change, Writ Petition No. 3621/2008 came to be filed before this Court. This petition after hearing parties thereto was decided by judgment dated 24.07.2009. By this judgment impugned communications and orders passed by the Authorities were quashed. The liberty was given to the petitioners to furnish application for the revision of plan so as to claim development of excessive 5% of the open space and the same was directed to be duly considered by respondent No. 4 - Deputy Director of Town Planning, Nashik Division.

4. After a years of passing of the said order, applicants have filed this application for recalling of the said order on different grounds claiming that the applicants are the owners of the plot and by the order impugned they are aggrieved. The first ground raised is that since the order has been passed without joining them as a party, the principle of *audi alteram partem* has not

been followed. The second contention of the applicants about impermissibility of the reduction of open spaces by itself. It was further contention of the applicants that the petitioner from his no right to prefer the petition and the *locus standi* of the petitioners was not considered as exception thereto was not taken during the hearing. Lastly, it is contended that the petition ought to have been entertained by Division Bench and not by the Single Judge Bench.

5. Heard counsels for both sides at length.

6. Learned counsel for the applicants submits that this application has been filed for recalling of the order impugned and such application is tenable. To support his submissions, he placed reliance on the judgment of Hon'ble Supreme Court in case of ***Asit Kumar Kar Versus State of West Bengal and others (2009) 2 SCC 703***.

6. There is a distinction between a petition under Article 32, a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected aparty.

7. We are treating this petition under Article 32 as a recall petition because the order passed in the decision in All Bengal Excise Licensees' Assn. v. Raghabendra Singh cancelling certain licenses was passed without giving an opportunity of hearing to the pesons who had been granted

licences. In these circumstances, we recall the directions in para 40 of the aforesaid judgment. However, if anybody has a grievance against the grant of licences or in the policy of the State Government, he will be at liberty to challenge it in appropriate proceedings before the appropriate court. The writ petitions are disposed of with these directions.

It is his further submission that in view of the provisions of the Mumbai High Court Appellate Side rules more particularly Chapter 17 Rule 18, petition ought not to have been entertained by the Single Judge Bench. It is his further contention on merit that since the applicants are the owners of the plots from the lay out, unless they were heard, no order ought to have been passed by this Court in the said petition. Similarly, it is his contention that the issue of reduction of open spaces has been decided by the Division Bench of this Court also by the Supreme Court in case of ***Anjuman E. Shiate Ali and another V/s Gulmohar Area Society Welfare Group 2020 (20) SCC 698*** and ***Vasantrao Vinayakrao Deshmukh and another V/s Aurangabad Municipal Corporation in Writ petition No. 5044/1999.***

7. Learned counsel for respondents supported the impugned order.
8. There cannot be any quarrel with regard to the propositions ought to have been canvassed, by consent for petitioner that in appropriate cases, a review of an order may be permissible where the person who is necessary party

to the petition has not been heard in the matter. This however would have not application to the present case, for the simple reason that while passing the impugned judgment, it was duly pointed out to this Court about existence of 158 plot owners from the same lay out and their interest in the petition. In spite of this fact being brought to the notice of this Court, it has recorded findings that their consent would not be necessary but the consent of the joining owners only would be necessary and relevant. If the contention of the applicants has to be accepted now that they are required to be heard, practically, it will be amount to reversing the order passed by this Court on merits. This exercise is wholly impermissible. Any such interference by the same Court would be judicial impropriety and also against judicial discipline. Thus even if it is accepted for the sake of argument that this Court in exercise of jurisdiction under Article 226 and 227 of the Constitution assumes inherent power of recall of any order, the said power must be exercised in rarest of rare case. Needless to emphasize that it would never be permissible for this Court to exercise the jurisdiction and act as an appellate/higher Court to reverse the findings recorded earlier.

9. The judgments relied upon by the learned counsel for the applicants in case of ***Ramjanamsingh V/s State of Uttar Pradesh and others***

AIR 1994 SC 1722 and National Housing Co-operative Society Ltd. V/s State of Rajasthan and others 2005 (12) SCC 149 in fact indicate that the applicants were fully conscious of the fact that it was open for them to challenge this order before the Supreme Court. They chose not to raise challenge to the same before the Supreme Court and sought recalling of the order.

10. If it was a case that this Court was not informed about the so called rights of other persons i.e., applicants and then proceeded to pass order, then it was altogether different circumstance and probably it would have been open for this Court to consider the request of it is found that applicants are necessary parties to the petition. As observed above even if applicants are now to be heard, it will amount to setting aside order passed by this Court on merit, as if done by Higher Court.

11. In so far as judgment of Anjuman and Vasantrao (cited supra) on the point of law settled about the impermissibility of the change/reduction in open spaces is concerned, the said judgment are passed in year 2015 i.e., after the passing of impugned order. The law settled subsequently, would certainly not become a ground to recall order passed by same Court.

12. With regard to the submission on Rule 18 of Chapter XVII, it needs to be appreciated that the said rule does not determine powers of the High Court under Article 226 and 227 of the Constitution. The said rules are merely made for the convenience and proper identification of the matters assigned by the Chief Justice to the different Benches. Pertinently, the parties have submitted themselves to the concerned Court and hence it would not be appropriate now to say that the matter pertained to Division Bench and hence the order passed deserve recall. Acceptance of any such argument will lead to create a situation that even a losing party after arguing a case before Bench of High Court, may raise such issue at later point of time to overcome adverse order. The basic jurisdiction of High Court to entertain the petition is not under challenge. Apart from this even otherwise there is no material on record to ascertain the assignment/roster approved by the Chief Justice at relevant time. This Court, therefore, finds no substance in the submissions of the counsel for petitioner, for recall of order on this count.

13. In the facts of the present case, entertaining the application as sought to be made well definitely amount of reversing the order on merit. Even if it is accepted for the sake of argument that it is the case of petitioner that the order is not correct, the only remedy would not lie to take exception

thereto before the same Court, under the guise of recall of the order. This Court does not will to be a party to set such a precedent, which has potentiality of misuse by the unscrupulous litigants.

14. As a result of above discussion, this Court finds no merit in the application and hence it stands dismissed.

(R. M. JOSHI, J.)

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