



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

REVIEW APPLICATION NO. 21 OF 2025

Sunil Laxman Mule
Age 46 years, Occu: Agriculture
R/o Maliwada
Tq. & Dist. Chh. Sambhajinagar

... **Petitioner**

VERSUS

1. The State of Maharashtra
Through Collector,
Office of the Collector, Chh. Sambhajinagar
2. The Upper Tahsildar
Office of Tahsildar, Chh. Sambhajinagar
3. The Executive Engineer,
National Highway Divn. 752H, PWD Office,
Padampura, Chh. Sambhajinagar
4. The Dy. Divisional Engineer,
PWD Sub Division, Gangapur
Chh. Sambhajinagar
5. Block Development Officer,
Office of the Panchayat Samiti,
Chh. Sambhajinagar

6. Ashok Bhanudas Mule,
Age 46 years, Occu: Agriculture
R/o Maliwada
Tq. & Dist. Chh. Sambhajinagar

... **Respondents**

Mr. F. R. Tandale, Advocate for the petitioner
Mr. Amar V. Lavte, AGP for the respondents State.

**CORAM : Y. G. KHOBRAGADE &
S. G. CHAPALGAONKAR, JJ.**

DATE : 04.04.2025

ORDER:-

1. Heard the learned counsel for the petitioner and learned AGP at length.
2. By the present application, the applicant/original petitioner seeks review of the order dated 01.10.2024 passed by this Court thereby dismissing the writ petition filed for issuance of direction against the respondent Nos. 2 to 5 for removal of impediment made by the respondent no. 6 or in alternate to direct respondent no. 3 to join two nalas (Gutter) one from east side and other west side flowing towards south at the point of Asegaon-Aurangabad-Nandgaon crossing from north side of Augrangabad-Nandgaon Road.
3. The learned counsel appearing for the applicant/petitioner canvassed that, though the petitioner has made constant persuasion and requested respondent Nos. 1 to 5 being public authority to intervene in the matter for removal of impediment made by respondent no.6 over the Nala (Gutter) passing through Government land adjacent to land Gat No.183/303, however, no action has been taken by the public authorities against respondent no.6 and allowed to flow the drainage/rain water through his land causing loss to the petitioner.

4. It is further contended that the document Exh. A (pages 18 to 22) of the Writ Petition shows that respondent no.6 has made impediment at chain No.2/00 to 2/200 by putting soil (Murum) in the Nala/Gutter, which is on road side, constructed by respondent nos. 3 and 4. So also, respondent no.4 issued notice to respondent no.6, thereby cautioned him that if the gutter is not vacated, action would be taken under the State Road Act, 1955. However, respondent Nos. 3 and 4 authorities failed to take action against respondent no.6 due to which, flow of drain water got obstructed and right of the petitioner to pass through said way has been infringed. However, on 01.10.2025, this Court passed an order holding that there is civil dispute exists between the petitioner and respondent no.6, hence, remedy is available before the Civil Court. Therefore, the petitioner prayed for review of the said order.

5. The learned counsel for the petitioner further canvassed that right of the petitioner has been infringed because of inaction on the part of respondent nos. 3 and 4 who have failed to perform their duties to protect the public property, therefore, the petitioner is unable to cultivate his land Gat No.185, Mouje Maliwada. However, this Court, while passing the order dated 01.10.2024, misread the facts and wrongly held about existence of civil dispute which is to be considered by the Civil Court. Therefore, considering the nature of obstruction created by respondent

no.6, it is necessary to review the order dated 01.10.2024 passed by this Court.

6. The learned AGP strongly opposed the application. It has been canvassed that, the grounds set out for review already been considered by this Court while passing the order dated 01.10.2024 and there is no error apparent on the face on record. So also, this Court considered all the grounds set out by the petitioner while passing order dated 01.10.2024, hence, prayed for rejection of the review application.

7. To buttress this submissions, the learned AGP placed reliance on the case of *Sanjay Kumar Agarwal Vs. State Tax Officer (1) and another, (2024) 2 SCC 362 and Radha Krishan Industries Vs. State of Himachal Pradesh and others, AIR 2021 Supreme Court 2114.*

8. Needless to say that scope of review under section 144 and under order 47 Rule 1 of the Civil Procedure Code is limited. Review of any judgment or order can be considered only on following grounds:

- (i) discovery of new and important matter or evidence; or
- (ii) mistake, or error apparent on the face of the record ; or
- (iii) any other sufficient reason.

And if these conditions are satisfied, the court should exercise the power.

9. In case of *Lily Thomas Vs. Union of India, AIR 2000 SC 1650*, the Hon'ble Supreme Court held that, the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.

10. In case of *Board of Control for Cricket, India & ors. Vs. Netaji Cricket Club & ors., AIR 2005 SC 592*, the Hon'ble Supreme Court held that it is settled proposition of law that judgment is open to review, if there is a mistake or error apparent on the face of record.

11. In case of *Radha Krishan Industries*, cited supra, the Hon'ble Supreme Court laid down the principles in paragraph No. 27 as under:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a

violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.”

12. In the case in hand, the petitioner has put forth prayer clause (B) as under:

“(B) By issuing appropriate writ or order in the similar nature, the order passed by this Hon’ble Court dated 01.10.2024 may please be quashed and set aside and the Writ Petition No.10724 of 2024 may please be restored to its original position and oblige.”

13. According to the petitioner, his right has been infringed only because of inaction on the part of respondent Nos. 3 and 4 who have failed to perform their public duties to protect the public properties, due

to which he is unable to cultivate his land Gat No. 185 Mouje Maliwada and respondent No.6 created impediment over the public property i.e. over Nala/Gutter passing through Government land Gat No. 183/303, adjacent to the land of respondent no.6, due to which free flow of drainage/rain water is obstructed, which caused loss to him. Therefore, apparently there is civil dispute between the petitioner and respondent no.6 which can only be adjudicated by the Civil Court after both the parties are put on trial. Merely respondent No.4 issued notice to respondent no.6 cannot be the ground to invoke writ jurisdiction under Article 226 of the Constitution for removal of encroachment as disputed question of facts are involved.

14. On perusal of grounds set out in the application for review, it prima facie appears about causing obstructions to free flow of drainage/water and some impediment is made over the gutter constructed by respondent Nos. 3 and 4 and respondent No.6 blocked free flow of drainage water by putting the soil over the gutter. Therefore, there is existence of civil dispute, which can only be sorted out by the Civil Court after the parties lead evidence.

15. Needless to say that, the petitioner has brought on record that, respondent no. 6 is served with notice issued by respondent no. 4, however, said notice can be used as an evidence by the petitioner.

Therefore, considering scope of section 144 and order 47 Rule 1 of the Civil Procedure Code coupled with legal principles laid down by the Hon'ble Apex Court in cited case laws, nothing is discernible from the grounds that any error apparent of the face of record has been occurred that requires reconsideration of decision rendered by this Court while passing order dated 01.10.2024.

16. Prima facie appears about existence of civil dispute between the petitioner and Respondent no. 6 about infringement of easementary right. On 01.10.2024, this Court passed an order and disposed off the petition after considering all grounds set out in the petition holding about existence of civil dispute which may be considered by the Civil Court. The grounds which have been set out by the applicant are well considered by this Court while passing the order dated 01.10.2024. The petitioner has not pointed out any mistake or error apparent on the facts of record. Therefore, we do not find any substance in the review application, hence, review application stands dismissed.

(S. G. CHAPALGAONKAR)

(Y. G. KHOBRAGADE, J.)

JPChavan