

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**REVIEW PETITION NO.48 OF 2025
IN
WRIT PETITION NO.3766 OF 2022**

M/s Smruthi Fotochem

Through its Partner Mr. P. M. Eaga

... Petitioners

V/s.

The State of Maharashtra & anr.

... Respondents

**WITH
REVIEW PETITION NO.49 OF 2025
IN
WRIT PETITION NO.8558 OF 2021
AND
REVIEW PETITION NO.50 OF 2025
IN
WRIT PETITION NO.8559 OF 2021**

Mr. Sanjeev Kadam with Mr. Shrikant Kompelli, Dr. Ramdas P. Sabban and Mr. Pravin Sabban for the Petitioners in all the review petitions.

Mr. Birendra B. Saraf with Mr. M.P. Thakur, APG for the State.

Ms. Geeta R. Shastri for Respondent No.2 in RPW Nos. 48 and 50 of 2025.

Mr. Pankaj J. Das for Respondent No.2-Solapur Municipal Corporation in RPW No.49 of 2025.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
DATE : 27th June 2025.**

ORDER (Per Kamal Khata, J.) :

- 1) By these Review Petitions, the Petitioners are seeking review of Order

dated 2nd January 2024.

2) Mr. Kadam, learned senior counsel for the Petitioner submits that, the interplay between the Maharashtra Regional Town Planning (MRTP) Act, 1966 and the Gunthewari Act was not considered in the right perspective by the impugned order. He submits that, the fact that the permissions granted under the Gunthewari Act issued in 2004, 2008 and 2019 were subsequently revoked/cancelled were not considered in the impugned Judgment.

2.1) Mr. Kadam submitted that, this Court's decision in *Shree Manish s/o Dinesh Soni and Others versus State of Maharashtra and others*¹ was not considered in the impugned Judgment. The Judgment held that in the Gunthewari Act building permissions cannot be granted on reserved lands and the constructions thereon are liable to be demolished under the MRTP Act, 1966. The judgement has binding effect and is applicable in cases where such Gunthewari constructions fall on Development Plan (DP) roads or reserved lands thereby frustrating the city planning objectives.

2.2) Mr. Kadam refers to Section 127 of the MRTP Act, 1966, which provides that reservations lapse if not acted upon within 24 months from the date of issuance of purchase notice. He submits that, as per the Supreme Court decisions under Section 127, if the reserved land is not utilised within the stipulated time, the owner is entitled to develop it. The Petitioners, therefore, issued a purchase notice under Section 127 of the MRTP Act, 1966.

¹ 2012 6 Bom CR 162

2.3) Mr. Kadam argues that, the layout permissions earlier granted to the Petitioners for the reserved lands falling under the provisions of Gunthewari Act, were illegal in view of *Manish Soni (supra)*, rendering development unfeasible unless reservation lapsed. He highlights that the Solapur Municipal Corporation (SMC) has taken an inconsistent stand in the present matter as compared to *Nitin Anna Rao Bhopale versus State of Maharashtra*², where it (SMC) revoked Gunthewari permissions granted in 2004 and 2008 and cancelled layout sanctions in 2019, rendering them nugatory.

2.4) Mr. Kadam submits that, the SMC simultaneously claims that development has been regularised under the Gunthewari Act yet denies the Petitioners building permissions to develop his own plot under the same law. In these circumstances, the issuance of purchase notice under section 127 of the MRTP Act was both legal and justified.

2.5) He further submits that, there was no suppression of material facts in the original petition. He points out to point No.8 in the “Points to be urged” section of the Petition and ground ‘E’ of the Writ Petition, to emphasize that the Petitioner had disclosed about the permissions granted by the SMC in 2004 and 2008. He further refers to point No.3 of the Petition, where the Petitioners sought records and information from the SMC. This according to him was sufficient disclosure of material facts. Additionally, he submits that the Petitioners did not deny facts stated in the reply in their rejoinder. Mr. Kadam

2 in PIL No. 35 of 2019 at page 117 of the Writ Petition

relies on *Sanjeev Kumar Jain vs. Raghubir Saran Charitable Trust & Ors.*³ to argue that, under the High Court Rules, the maximum cost that could have been imposed was ₹3,000, and that the exemplary costs levied were excessive and should be set aside.

2.6) The learned senior counsel further contends that, the observations in paragraphs No.9, 12 and 15 are incorrect and the Petition disclosed all the relevant facts and hence, the finding of suppression and imposition of exemplary costs are unjustified. He prays for review of the impugned order.

3) Heard Mr. Kadam for the Petitioners, Ms. Geeta R. Shastri, for Respondent No.2-Municipal Corporation in RPWs No.48 and 50 of 2025 and Mr. Pankaj J. Das, for Respondent No.2-Solapur Municipal Corporation in RPW No.49 of 2025.

4) Having heard and re-examined the impugned Order, we find that, suppression is evident. These Petitions did not seek an adjudication on the interplay of the Gunthewari Act and the MRTTP Act. It simply sought a declaration that reservation of land had lapsed.

5) As noted in paragraph 6 of the impugned order, the petition refers to the draft Development Plan of Solapur (1997 -2017) being sanctioned on 15th identifying the land as reserved for fire brigade, garden and municipal shopping centre purposes and then directly proceeds to the issuance of the purchase Notice on 20th February 2020, omitting all relevant intervening

3 (2012) 1 SCC 455

developments.

5.1) Similarly, paragraphs 7 to 10 clearly set out the suppression. The Petition misleadingly suggests that the reservation had lapsed and fails to disclose the interim events, misleading the Court into believing that no action occurred in the intervening period.

6) We find no merit in Mr. Kadam's submission that there was no suppression. Isolated averments in "Points to be urged" or a solitary ground referencing a request for documents cannot be treated as full disclosure, especially when the Petition omitted to mention that SMC had granted development permissions for Plot No. 3, as outlined in paragraph 11 of the impugned order.

7) The impugned Judgement also records in paragraph 16, that the Petitioners took advantage of the sanctioned primary layout plan dated 27th February 2019 for development of Plot Nos 1 to 10, including Plot No. 3, and only thereafter issued a purchase notice under section 127 of the MRTP Act alleging lapsing of reservation as explained in paragraph 17.

8) As noted in paragraph No.18, it was the learned Advocate General, who pointed out that the rejoinder filed contained only denials and fails to refute the State's contentions by specific pleadings.

9) We find that, the Petition is entirely silent on the permissions granted to the Petitioners. In our view, it was incumbent upon the Petitioner to have set out all the said facts and explained why having obtained the advantage of the

concessions the Petitioners were entitled to a declaration of lapsing of reservation. The Petitioner has admittedly not done so, and the Petitioner is guilty of suppression of a material facts.

10) It is well settled that, the party who invokes the extraordinary jurisdiction of this Court is supposed to be truthful, frank and open and must necessarily disclose all the material facts without any reservation, even if they are against such party. It is not open to a Party who seeks equity to play “hide and seek” or to “pick and choose” certain facts and to suppress and/or conceal other facts. These principles are categorically laid down by the Hon’ble Supreme Court in the case of *K.D. Sharma v SAIL*⁴.

11) Regarding costs, the Supreme Court in *Dnyandeo Sabaji Naik v. Pradnya Prakash Khadekar*,⁵

13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

4 2008 12 SCC 481

5 (2017) 5 SCC 496 : (2017) 3 SCC (Civ) 189 : 2017 SCC OnLine SC 211 at page 504

14. ... The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.

12) We find the Review Petitions to be nothing more than an attempt to reverse the finding of suppression or alternatively seek a reduction in costs imposed.

13) In our view, this is a clear abuse of process of law and merits strong condemnation. The suppression is established and the costs were appropriately imposed considering the Petitioners conduct in deliberately withholding the truth and seeking to derive an undue advantage from the Court.

14) We find no error apparent on the face of the record in the impugned Order dated 2nd January 2024. The Order under Review correctly appreciates the facts and the law. We find no merit in these Review Petitions and are accordingly dismissed.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)