Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION (L) NO. 2 OF 2020

IN

WRIT PETITION NO. 729 OF 2015

WITH

INTERIM APPLICATION NO. 52 OF 2020

IN

REVIEW PETITION (L) NO. 2 OF 2020

The Municipal Corporation of Greater Mumbai …Petitioners
& Ors

Versus

Zenith Tins Private Limited & Anr …Respondents

Mr Girish Godbole, *with Sagar Patil, for the Petitioners-MCGM.*
Ms Niyati Merchant, *with Yash Dhruva & Harsh Sheth, for the Respondents.*
Mr Mankar, *Assistant Engineer Improvement, present in Court.*
Mr SB Gore, AGP, *for the State.*

CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 3rd October 2022

ARUN RAMCHNDRA SANKPAL

Digitally signed by ARUN RAMCHNDRA SANKPAL
Date: 2022.10.03 18:38:02 +0530

PC:-

1. This Petition is a gross abuse of the process of a Court. The fact that it is done by the MCGM only makes it worse. Review is

sought of our order dated 17th September 2019 (SC Dharmadhikari and one of us, GS Patel, JJ). Rule was made absolute. While doing so, the Court considered an Affidavit dated 12th August 2016 filed by one Sudhakar Ramkrishna Mahajan on behalf of the MCGM on the merits. We have called for the records of the Writ Petition. That Affidavit of the MCGM with which Mahajan worked as an Assistant Engineer (IPM)-1 is from pages 161 to 166. There are annexures to that Affidavit and some of these go back to 1998 or earlier.

2. The Review Petition is mounted on the footing that *after the order in question of 17th September 2019* somebody in the Estate Department found documents that are of an even earlier vintage. Ground(g) at page 11 reads thus:

> "(g) The documents referred in this Review Petition were discovered after the Petitioner sifted through the archived record regarding more than 4700 leasehold plots and then more particularly all three plots bearing numbers Plot No.1-C (part) Plot No.2A, Plot No.1-C(part) Plot No.2B and Plot No.1-C (part) Plot No.2C, out of which the Plot No.1-C (part) Plot No.2C which were created after subdividing Plot No.1-C (part) Plot No.2."

3. We are told that the MCGM and its officers "sifted" through the archive record. Why this process of sifting was not possible before an Affidavit in Reply was filed is unclear. Mahajan's Affidavit in paragraph 1 says that he had gone through the "available relevant records pertaining to the matter under consideration". He also says that he had "acquainted himself" with the facts and circumstances of the present case" and that he was able to depose to it.

4. Now we are told in this Review Petition that Mahajan's statements on sworn affidavit are incorrect. Now we are told that there were records, but to which Mahajan could not have deposed.

5. Most importantly. we are not told how this case falls within Section 114 or Order 47 of the Code of Civil Procedure 1908 ("**CPC**") and particularly how in these circumstances there can be said to have been "due diligence" on the part of the MCGM in finding this material.

6. The Review Petition is entirely without substance. It is dismissed.

7. There will be an order of costs payable to the original Writ Petitioner quantified at Rs. 2 lakhs.

8. The pending Interim Application does not survive and is disposed of accordingly.

(Gauri Godse, J) **(G. S. Patel, J)**