

(2004) 04 GUJ CK 0086
In the Gujarat High Court

Case No : Misc. Civil application No. 1074 of 2003 in Special Civil Application No. 4723 of 2002

Ram Shiksha Sadan Trust

APPELLANT

Vs

Paras Education Trust

RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114 , 151
Constitution of India, 1950 — Article 14, 215, 226, 251
Gujarat Town Planning and Urban Development Act, 1976 — Section 65, 67
Limitation Act, 1963 — Article 124

Citation : (2004) 04 GUJ CK 0086

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : Devang T. Shah, for Petitioner No. 1-3 in Misc. Civil application No. 1074 of 2003, for the Appellant; H.S. Sanjanwala and Amit v. Thakkar, for Respondent No. 1-2, M.D. Pandya and Nandini Joshi, AGP for Respondent No. 5-7 in Misc. Civil Application No. 1074 of 2003, for the Respondent

Judgement

C.K. Buch, J.—This Misc. Civil Application -Review Application is preferred by the applicants -original respondent nos. 4 to 6 of main writ petition viz. Spl. C.A. No.4723/2002 (hereinafter referred to as Spl.CA) moved under Article 226 of the Constitution of India in the matter of Gujarat Town Planning & Urban Development Act. In this application, the applicants have prayed that the order passed by this Court on 3.2.2003 while disposing of the above-said Spl. C.A., be reviewed and thereby recall the same and treat the Spl.CA as dismissed. It is simultaneously prayed that if this application viz. review application is found barred by period of limitation, then the delay, if any, be condoned. Opponent Nos. 1 & 2 are original petitioner and opponent nos. 3 to 7 are original respondent nos.1 to 3, 7 & 8 of the main Spl. CA.

2. It would be appropriate to have a look at the facts leading to the present Review Application. The original petitioners -opponent nos. 1 & 2 herein had

challenged the decision of Surat Urban Development Authority (hereinafter referred to as SUDA) allotting a piece of land to applicant no.1 Ram Siksha Sadan Trust, Surat from TP Scheme No.1 (Vesu) of Final Plot No.185 admeasuring about 5694 sq. mts. Ld. Sr. Counsel Mr. S.H. Sanjanwala had taken this Court through number of legal as well as factual grounds mentioned in the memo of Spl.CA and had submitted that petitioner Paras Education Trust has fundamental - statutory right to get the allotment of the very piece of land for being used for educational purpose which would be in consonance with the reservation made in the TP Scheme and, therefore, it is the right of petitioner Paras Education Trust to have their application considered by respondent nos.1 & 2 namely SUDA and its Chairman. Respondent no.2 in the Spl.CA was the Chairman of SUDA and opponent no.4 herein. Application of petitioner Paras Education Trust was pending before SUDA. However, the order allotting the land directly to Ram Siksha Sadan Trust passed is arbitrary, illegal, unreasonable and malafide and, therefore, the allotment of land requires to be quashed. For the sake of convenience and to appreciate the say of the present applicants, I would like to quote relevant pars of Spl.CA being paras-4(E), 4(F), 4(G) and 4(GG) as under:-

4(E) It is respectfully submitted that the actions of the respondent nos. 1 and 2 in not considering and disposing the application/ representation made by the petitioner for allotment of land to the petitioner is arbitrary, unreasonable and violative of fundamental rights guaranteed under the Constitution of India. In fact, it is in breach of the order of the Hon''ble Court, by which it was directed to the respondent nos. 1 and 2 to dispose of the application/ representation of the petitioner within a period of two months. The petitioners state that the petitioners have not received any reply of the application/ representation stating that the said application/representation is rejected or disposed of in any other manner. Thus, it appears that even without disposing of the application/ representation submitted by the petitioners for allotment of the land in question to the petitioner, the respondent nos. 1 and 2 have hurriedly and most surreptitiously decided to allot the same land to respondent nos. 4 to 6. Therefore, the action of respondent nos. 1 and 2 is contrary to the directions issued by the Hon''ble Court and therefore it is void and totally vitiated. Further, without disposing of the application/ representation of the petitioners, as directed by the Hon''ble Court, the respondent nos. 1 and 2 could not have even imagined to decide the question of allotment of land to the respondent nos. 4 to 6. Therefore also, the action of the respondent nos. and 1 and 2 is also vitiated on the face of it and it can not be allowed to be implemented.

4(F) It is submitted that the action of the respondent nos. 1 and 2 regarding disposal of the land which has been reserved for education purpose under the Town Planning Scheme has to meet the requirements of reasonableness and fairness. It is now well settled that even administrative actions are required to be tested on principle of reasonable and fairness and if the action is unreasonable, it is bound to be struck down, as violative of Article 14 of the Constitution of India.

It is submitted that on the principle analogous to the right of pre-emption, the petitioner, which is already running school in the adjoining land and which requires the said land for expansion and starting educational activities on the land in question, has to be allotted the said land in preference to others. This aspect has not been considered by the respondent nos. 1 and 2. If it is tested on the question of reasonableness and fairness, action of respondent nos. 1 and 2 in allotting or proposing to allot the land to respondent nos. 4 to 6 is nothing but arbitrary and unreasonable. It is submitted that the public authorities are bound to act fairly, reasonably and in transparent manner. The petitioner Trust, especially when it is an educational trust, has legitimate expectation in the matter of allotment of land that the respondent nos. 1 and 2 would act fairly and reasonably and that the legitimate claim of the petitioner would not be defeated by any unreasonable or totally extraneous consideration. This has been totally denied in the present case. The correspondence between the petitioners and the respondent nos. 1 and 2 clearly demonstrates that time and again, the petitioner has been requesting for the allotment of land and it was promised more than once that on finalization of the Town Planning Scheme, the land will be allotted to the petitioners. Thus, the respondent nos. 1 and 2 had no right whatsoever to dispose of the land in a surreptitious manner and without any transparent procedure and without inviting the petitioners for discussion and/or without considering the claim of the petitioner, which was a legitimate claim. Thus, looking from any angle, the proposed action of the allotment of land to the respondent nos. 4 to 6 is nothing but arbitrary and violative of Article 14 of the Constitution of India.

4(G) The petitioner submits that as per the procedure prescribed by law and as per the rules and regulations, and as per the provisions of law, the land vests with SUDA only after the preliminary town planning scheme is sanctioned by Government u/s 65 of the Act. The petitioner states that the petitioner after enquiry have known that the Government has not yet sanctioned the said T.P. Scheme as per Section 65 of the G.T.P. Act, 1976. Nor any notification is issued so far as provided u/s 65 of the G.T.P. Act, 1976.

4(GG) The petitioner says that pursuant to the order passed by this Hon'ble Court, the Respondent nos. 4, 5 and 6 have tendered certain documents in this Hon'ble Court and has also produced so called allotment order dated 15th October, 2001, on relying upon which, to say that the land has been allotted to them. However, the learned Advocate for the Surat Urban Development Authority has made a categorical statement that the Board has not taken any decision to allot the land to Respondent Nos. 4, 5 and 6. The order dated 21.1.2003 (Coram: C.K. Buch, J) is reproduced below for ready reference:

"The learned Counsel for respondents nos. 4, 5 and 6 has tendered the relevant documents in compliance of earlier order passed by the Court on 13.01.2003. The same is taken on record. Mr. M.D. Pandya, learned Counsel for SUDA states that as per the instruction received by him, no formal allotment has been made

in favour of any educational institute or trust as alleged by the petitioner and no decision has been taken by the Board and the scheme is pending with Government for approval. At the request of Mr. Sanjanwala, Learned Sr. Counsel with Mr. A.V. Thakker, S.O. to 27.1.2003."

It is, therefore, submitted that the Chairman of Surat Urban Development Authority has no authority whatsoever to pass order or any such letter to allot the land to Respondent nos. 4, 5 & 6. The allotment, if any, is thus illegal and the order/letter dated 15.10.2001, a copy whereof is hereto annexed and marked as ANNEXURE: J1, is required to be quashed and set aside in the interest of justice."

3. During the course of oral submissions of Id. Sr. Counsel Mr. Sanjanwala, a pointed query was raised by the Court to Id. Sr. Counsel Mr. M.D. Pandya appearing for original respondent no.1 SUDA in light of the facts stated in the affidavit-in-reply filed on behalf of respondent no.1 SUDA wherein it has been stated that as per Sec.67 of the Town Planning & Urban Development Act (hereinafter referred to as the TP Act), all the lands required by the appropriate authority vest absolutely in appropriate authority i.e. SUDA only on the day on which preliminary scheme comes into force and in this case, preliminary scheme has not come into force and, therefore, land under reservation has not been vested in appropriate authority and can not be disposed of at this stage. This affidavit dated 10.12.2002 came to be filed in the main Spl.CA in the month of January-2003. It is true that ground 4(GG) came to be added in the main Spl.CA vide draft amendment dated 27.1.2003, but the fact remains that on the date of the order sought to be reviewed by the applicants, the stand of SUDA was consistent with the stand taken in the reply affidavit and, therefore, Id. Sr. Counsel Mr. Pandya had categorically submitted that respondent no.1 SUDA has not allotted the land in question to anybody and he had also taken this Court through relevant part of affidavit-in-reply filed by the State Government wherein responsible officer of the State Government has stated on oath that TP Scheme No.1 (Vesu) has not been finalised and yet land in question has not been vested in respondent no.1 SUDA and so there is no question of allotting the land referred to by the original petitioner Paras Education Trust in the petition to respondent no.4 trust. It was fairly submitted that because of some act on the part of respondent no.4 RAM SIKSHA SADAN TRUST, the petitioners have rushed to the Court. It was further contended before the Court that "there is no formal resolution passed by SUDA allotting the land in question to anybody".

4. The stand of the present applicants is that respondent no.4 RAM SIKSHA SADAN TRUST was promised for allotment of that very piece of land. The request to allot this land to RAM SIKSHA SADAN TRUST was referred to the Price Committee and value of the land was determined by the Committee and thereafter the amount equal to total valuation of the land was paid to SUDA as per the directions issued by the Chairman of SUDA and in compliance with the order received by RAM SIKSHA SADAN TRUST from the Chairman of SUDA. On the statement made by one of the advocates appearing on behalf of the

respondents viz. Id. Sr. Counsel Mr. M.D. Pandya appearing on behalf of SUDA, the petitioner decided to withdraw the petition. The request was for unconditional withdrawal and, therefore, the Court was under obligation to dismiss Spl.CA on unconditional withdrawal as reflected in the order. The said order is sought to be reviewed.

5. It is argued by Id. Sr. Counsel Mr. S.B. Vakil appearing for the applicants RAM SIKSHA SADAN TRUST that there was no reason for the Court to make any observations in the nature of directions to any of the parties including the present applicant RAM SIKSHA SADAN TRUST or respondent SUDA or its Chairman. The Court can legitimately grant withdrawal with a liberty to the petitioner to press for demand of the land in question, but the subsequent part of the order can be said to be an improper exercise of jurisdiction and/or act of exceeding jurisdiction vested with the Court under Article 226 of the Constitution of India. The subsequent part of the order has created a situation whereby the applicant RAM SIKSHA SADAN TRUST was pulled out from priority and its right to claim first as first allottee or to get the promise enforced given to the Trust is rendered infructuous. Even if the Chairman of SUDA was found indulging in certain irregularities in connection with the allotment of land or in discharge of his duties, by itself would not affect adversely to the allotment of piece of land made to applicant RAM SIKSHA SADAN TRUST. The Court had no jurisdiction to pass any order having effect or situation which could emerge subsequent to publication of notification of vesting of the land in SUDA. According to Mr. Vakil, withdrawal was not on any condition or because of the observations made and directions issued by the Court in later part of the order. The subsequent part of the order has altered facts situation which had emerged or created by earlier part of the order. For short, the submission is that after dismissal in limine or withdrawal of a petition, no observations or directions having effect of a decision either can be made or passed on merits. The order is of 3.2.2003 and present application to review the order has been moved in the month of April-2004. Therefore, there is no element of delay or laches and condonation of delay is already prayed. Referring Sec.151 of CPC, it is argued that the applicants are not here before the Court seeking only procedural review, but the prayer should be considered in the context of wide powers of this Court under Article 215 of the Constitution of India. According to Mr. Vakil, language of the order of the Court is inconsistent and contradictory and, therefore, High Court being the Court of record, has powers and duty to review its own order/judgment. Placing reliance on the ratio of the decision in the case of M.M. Thomas Vs. State of Kerala and Another, it is submitted that to correct inconsistent and/or contradictory orders, is not only within the powers of this Court, but it is also the duty of the Court, being the error apparent on the face of record. Quoting para-14 of the decision, wherein the Apex Court referred the decision in the case of Naresh Shridhar Mirajkar v/s State of Maharashtra, reported in AIR 1967 SC P.1, it is argued that the error can be rectified suo motu. Let me quote relevant para-14 :-

"14. The High Court as a court of record, as envisaged in Article 215 of the

Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it, the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary."

6. The applicants have mentioned details and stated that there is a scope to review the order and the applicant being a party aggrieved and affected because of error, can approach the Court by filing an application under R.1 of O.47 of CPC because the order sought to be reviewed has adverse binding effect on the applicants.

7. Placing reliance on the decision in the case of Common Cause, A Registered Society Vs. Union of India and Others, , it is argued that the High Court under Article 226 of the Constitution of India enjoys plenary powers and said powers are not flattered by any legal constraint. If the Court in exercise of these powers has itself committed a mistake, it has plenary powers to correct its own mistake. Ld. counsel appearing for the applicants has taken me through relevant para-179 of the said decision, but I do not think it necessary to reproduce here as the same is accepted principle of law established by more than one judgments including the decision in the case of Nagraj v/s State of Karnataka, reported in 1993 (4) SCC 595. To hammer the point that it is the duty of the Court to review the decision if an error committed needs to be corrected, Mr. Vakil has also relied on following decisions:-

- (i) L. Hirday Narain Vs. Income Tax Officer, Bareilly, ; (ii) Surjit Singh and others Vs. Union of India and others,
- (iii) 1950 Federal Court P.131.

It is argued that the ratio of the decision in the case of Umashankar v/s State of U.P. & Others, reported in 1999 SCC (L &S) P.645, squarely applicable to the facts of the present case wherein the Apex Court has observed that when a petition under Article 226 is dismissed in limine, further orders and directions can not sustain. It is contrary to the propriety. It is observed that having once dismissed a writ petition, the Court can not add further directions which result in altering the status in favour of the applicant/petitioner. To appreciate the submissions of Mr. Vakil based on the aforesaid cited decision, I would like to quote relevant para-4 thereof which reads as under:-

"We have straightway put the respondents' counsel to explain how he can support the said order. As is natural, it is an uphill task for him. Amusingly, the appellant who was respondent before the High Court after the dismissal of the writ petition, became worse off than before. The High Court could not have in this manner snatched from the appellant the benefit of service and back wages

sequely following the orders of the Services Tribunal, unless it had condoned the delay and entertained the writ petition on merits. It appears that the questioned direction was made by the High Court hastily without appreciating its fallout. The same is hence unsustainable."

8. It is submitted that when Court has plenary powers and imperative duty to review which is only a procedural, the question of delay should not come in the way or non-filing of an appeal against the very order also would not hamper the right of the applicant to get the order reviewed by moving an application or plenary powers of the Court to correct its own decision. Plenary powers in all cases to correct an error solely depends on Court's conviction as to commission of an error and the present applicants have attempted to bring said error to the notice of the Court. Therefore, the infirmity of alleged delay or latches would not go to the root of the present application. Mr. Vakil has also attempted to point out that this Court can not and should not ignore the scheme of Gujarat Town Planning Act and the equity which on the date of order was in favour of the present applicants. The amount fixed by the Price Committee was already paid and, therefore, there was no reason for this Court in directing the present applicant RAM SIKSHA SADAN TRUST that if it so desires, is entitled to request SUDA for refund of the amount deposited as consideration of the land in question.

9. Placing reliance on the decision in the case of Hitendrakumar Thakordas Raval & Ors. v/s State of Gujarat & Ors., reported in 21 GLR 83 , it is argued by Mr. Vakil that in appropriate cases, even where there is a delay in preferring Spl.CA or writ petition, a relief can be granted by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India. High Court was dealing with a dispute as to certain piece of land which was sought to be acquired for the purpose of Gujarat Housing Board and question of implementation of the policy laid down by the State Government and consistency and uniformity in following the policy in this regard is laid down. Whether any principle could be made applicable squarely in cases where review has been sought under Sec.151 of CPC R/w Article 251 of Constitution of India, is altogether a different question. It is true that in case of Smt. Sudama Devi Vs. Commissioner and Others, the Apex Court has held that there can be no hard and fast rule of latches and general rule of latches can be applied depending on the facts and circumstances of each case. In the cited decision, High Court has rejected the substantive petition moved under Article 226 of the Constitution of India as it was filed after expiration of 90 days. The Apex Court said that it was not proper.

10. The question posed before this Court in the present application by Id. Sr. Counsel Mr. Sanjanwala is whether any party which is responsible for delay or is guilty of latches, can be granted any relief and that too in review application where such party had failed in ventilating it's grievance before the higher/appellate forum. Error committed can not be rectified by such or similar review application. It is rightly argued by Mr. Sanjanwala that when facts narrated in the application are not able to bring the case under the scope to review, even prima

facie, then in that case, the question of delay or guilt of latches should be closely looked into. So, the aforesaid decision cited by Mr. Vakil also would not help the applicants.

11. The arguments of Id. Sr. Counsel Mr. Vakil are not found acceptable that though there was statutory remedy available with the applicants to prefer an appeal, it would not take away or otherwise prejudice the right of the applicants to approach very Bench for review, if applicants are able to satisfy the Court that an error apparent on record is committed and same requires to be rectified. By exercising jurisdiction under Article 226 of the Constitution of India itself, the Court can grant relief to the applicants as prayed ignoring the existence of an alternative remedy to prefer an appeal against the very order. However, this Court is of the view that the order sought to be reviewed requires to be read as a whole. Sequence of paragraphs are not at all relevant. The purpose of withdrawal of the writ petition and the reasons had tempted the petitioner to withdraw the petition which is reflected in the order and the Court is supposed to consider the entire set of documents including reply affidavit filed by SUDA and the stand taken by the petitioner in the petition. Id. counsel appearing for respondent RAM SIKSHA SADAN TRUST has practically conceded to the fact situation that the day on which the Trust allegedly was granted the land, the parcel of the land in question and entire area of the land had not vested under the Scheme in SUDA. If certain irregularity is committed by the Chairman who has written a letter granting land in question to RAM SIKSHA SADAN TRUST is ignored, even then the fact remains that for want of resolution passed by the authority and as the land was not available with SUDA for allotment or grant allotment, the letter written by the Chairman had not created any right in favour of RAM SIKSHA SADAN TRUST, nor the liability for SUDA which may put SUDA under an obligation to enforce so-called commitment made by the Chairman of SUDA. It would not be possible for this Court at that relevant point of time to hold that the letter can be construed even as a promise by SUDA to RAM SIKSHA SADAN TRUST. Therefore, the order which has been passed by the Court, is an order invited by the parties appearing in the matter including the present applicants. So, ratio of the decision of the Apex Court in the case of L. Hridaya Narayan (supra), would not help the applicants.

12. To appreciate the point of limitation raised by Id. Sr. Counsel Mr. Sanjanwala, I would like to quote Article 124 of the Limitation Act which is relevant for the purpose:-

Description of Period of Time from which suit limitation period begins to run.

124. For a review Thirty The date of the by a Court other days decree or order than the Supreme Court.

I am in agreement with the submissions of Id. Sr. Counsel Mr. Sanjanwala that in absence of detailed reasons for delay caused in preferring review application, the

application can not sustain and can be dismissed only on this sole ground.

13. It seems that filing of the present review application is an afterthought and applicant Trust has attempted to take "U" turn adopting a different stand. The qualification made by the Court in para-5 is on the request of Id. counsel appearing for the applicant Trust because the applicant Trust was also intending to stand in queue and the attempts to incorporate certain aspects by the petitioner Paras Education Trust was not accepted as they were found hypothetical. SUDA is otherwise not entitled to allot/grant this very piece of land to any other person or body of persons unless it is for a public/religious purpose and that too for educational activities. The petitioner Paras Education Trust was anxious to see that his request to grant very piece of land is considered but when the petitioner trust came to know that on the date of filing of the petition, the authority i.e. SUDA was not vested with the land and the petition being found premature, request for withdrawal was extended. I would like to quote relevant part of para-5 of the order which gives clear indication that the order sought to be reviewed has been passed on invitation by parties appearing in the matter and on that day no formal request even was made that respondent no.4 present applicant should be granted any preference. On the contrary, applicant RAM SIKSHA SADAN TRUST has accepted to keep two different options open and, therefore, it is mentioned in the order that "it is further observed that in view of the facts and circumstances as aforesaid, the impugned letter written by Chairman of SUDA granting land in question to respondent no.4 Trust and directing the trust to pay an amount of consideration, has no legal force. Respondent No.4 will be also entitled to request SUDA for refund of the amount deposited by the Trust, if it so desires." It was clarified before the Court that though there was no formal legal allotment of piece of land by SUDA, certain overt act was done by respondent no.4 RAM SIKSHA SADAN TRUST i.e. placing signboard etc., petitioner no.1 Paras Education Trust had rushed to the Court with substantive petition. So, there is no error or mistake committed by the Court in passing the order. It seems that by splitting paragraphs and exploiting the sequence of paragraphs of the order and sentence used by the Court while dictating paras 4 & 5 of the order, the present applicant has created a case of jurisdictional error committed by the Court on the face of record and has moved this review application after a lapse of reasonable period of time without any justifying cause for delay and latches, otherwise the trust could have rushed immediately to this Court within 30 days i.e. within prescribed period of limitation. On the contrary, ratio of the decision in the case of Lilaben Vs. Rajendrabhai R. Gurjar, and in the case of Ajit Kumar Rath Vs. State of Orissa and Others, (Head Note : E) would help the original petitioner Paras Education Trust. If it is accepted that this Court has committed an error in developing reasons and in granting liberty to the original petitioner, then also, such an error can not be equated with an error which can be corrected by review application as per the ratio of the decision of the Apex Court in the case of Parsion Devi and Others Vs. Sumitri Devi and Others, . In above-referred cases, the Apex Court

was dealing with Civil Appeal in light of O.47 R.1 & Sec.114 of CPC and it has been observed that the judgment may be open to review inter alia if there is a mistake or error apparent on the face of record. An error which is not self evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of record justifying the Court to exercise powers of review. Exercise of jurisdiction as per the accepted proposition of law of review, therefore, can be said to have a limited compass and it is not either legal or permissible as regards to an erroneous decision to be reheard and corrected. There is a clear distinction between an error apparent on the face of record and an erroneous decision. In view of above, I am not even in agreement with the applicants that the order sought to be reviewed is either erroneous or is incorrect procedurewise. The order has to be read as a whole and there is no such error even in developing reasons. Relevant are the reasons, findings or observations and the sequence of paras. In the case of Ajit Kumar Rath Vs. State of Orissa and Others, while dealing with a service matter pertaining to seniority of the appellant, the Apex Court has observed that powers of review are not absolute. The scope of review is limited to correction of patent error of law or facts which stars on the face without any elaborate arguments being needed to establish it. Of course, the Apex Court was dealing with the decision of State Administrative Tribunal in the background of certain provisions of Administrative Tribunals Act, 1985, but still the ratio propounded in the aforesaid decision would clearly govern the dispute raised by the applicants before this Court. Plain reading of the present application and various submissions advanced by Id. senior counsel Mr. Vakil clearly suggests that the applicants have put good efforts in pointing out the alleged error. Id. counsel appearing for the applicants was present when impugned order was being passed and option as to have refund of amount deposited with SUDA has been provided by the Court on the suggestion of Id. counsel appearing for Paras Education Trust. Whether the submissions made by Id. Sr. Counsel Mr. Pandya appearing for SUDA were contrary to the actual stand taken by SUDA or whether Id. counsel Mr. Vijay Patel appearing on behalf of the applicant Trust had authority to create any effect that may bring some adverse contingency in any future litigation cropped up or not, are not the areas which can be looked into while dealing with the review application of the present nature. Mistake apparent on the face of record does not mean an error which is to be fished out and/or searched out. "Any other sufficient reason" appearing in O.47 R.1 of CPC, must mean a sufficient ground atleast analogous to those specified in Rules. This principle has been propounded by Privy Council in the case of Chhaju Ram v/s Neki Ram, reported in AIR 1920 PC P.112 and approved by the Apex Court in AIR 1954 SC P.526 (Beassellos Catholic's case).

14. In case of Padma Vs. Hiralal Motilal Desarda and Others, dealing with allotment or auction of flats, plots or shops by Housing Board to Development Authority wherein the Apex Court has elaborately discussed the principles of fairness in action in relation to the administrative action. The order sought to be reviewed when was passed, this principle was brought by the original petitioner

under discussion and on that point of time, Id. Sr. Counsel Mr. Pandya appearing for SUDA had pointed out that there is no formal decision of allotment by passing resolution has been taken by the Committee because on the relevant date, there was no vesting of land in question in SUDA as clarified in affidavit-in-reply. So, it would not be legal or justified for this Court to make any modification or substitution in the language of the order passed by the Court and such substitution of language even is not permissible unless the Court accepts that an error or mistake apparent on face of record has been committed and requires to be corrected. On the contrary, if the say of Id. Sr. Counsel Mr. Vakil is appreciated in its true perspective, then it can be said that the applicants have allegedly to create a ground so that it can be alleged that the decision is erroneous technically as well as on merits. In case of State of Gujarat & Anr. v/s Sakalchand P.Vachheta 2000 (2) GLR 1187, this Court has observed that "..... The power of review may be exercised on the discovery of new and important mater or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error on the fact of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal." The present case do not fall in that category.

15. In the case of Lilaben Vs. Rajendrabhai R. Gurjar, this Court has held that application for review of the order not maintainable if the same is not passed on merits especially when there are no factual or legal controversy decided by the Court. In the present case also, the Court has not decided the controversy brought by the petitioner on merits. On the contrary, it was pointed out by SUDA in its written reply that the petition or stand taken by RAM SIKSHA SADAN TRUST are erroneous being misconceived as there was no land for allotment available with SUDA of TP Scheme No.1 (Vesu) and, therefore, practically an invited type of order came to be passed.

16. In the case of State of Haryana and Others Vs. Mohinder Singh and Others, the Apex Court has observed that

"..... It has often been reiterated that the scope available for a litigant invoking the powers of review is not one more chance for rehearing of the matter already finally disposed of. The course adopted in this case by the High Court appears to be really what has been held by this Court to be not permissible. While noticing some of the submissions made on merits by either side, we consider it appropriate to place on record that even the learned counsel for the appellant could not seriously dispute the position that the respondents would at any rate be entitled to be placed on the "first higher standard pay-scale" and that to this extent atleast the respondents" claim would deserve consideration."

In the case on hand also, the present applicant Trust and one of the opponents of the main petition, was not in a position to meet with the stand taken by SUDA

and the submissions made by Id. Sr. Counsel Mr. Pandya appearing on behalf of SUDA. Therefore, certain directions given and observations are made by the Court in the subsequent portion of the order when are on agreed factual and legal position placed before the Court, can not be said to be erroneous or uncalled for or it can be said to be falling within the compass of jurisdictional error committed. One more chance to reopen the point can not be offered.

17. For the reasons stated above and in view of the settled legal position referred to above, I am of the view that on both the counts i.e. even on the ground of delay and laches as well as on merits, this Review Application fails and requires to be rejected. Hence, this Review Application is rejected on both the counts. No costs. Notice discharged.