

Ashwani Kumar Sharma versus C.K.Mathew and others

CMP No. 10889/2019 in COPC No. 4329/2013.

11.07.2025 Present: Mr. Ajay Sharma, Senior Advocate with Mr. Atharv Sharma, Advocate, for the petitioner.

Mr. Surinder Saklani, Advocate for the respondents.

CMP No. 14376/2025

The application stands disposed of as having become infructuous.

CMP No. 14179/2025

The case has a chequered history, wherein a young person, who initiated this litigation is now nearly an octogenarian, aged about more 78 years.

2 The petitioner/non-applicant had approached this Court by filing writ petition No. 492/2007 with specific prayer that the respondents/applicants be directed to allot the land to the petitioner in consonance with the **CWP (C) No. 439/1992**, decided by the Hon'ble Supreme Court on 26.7.1996 in case titled as **Pradesh Pong Bandh Visthapit Samiti, Rajasthan vs. Union of India, (1996) 9 SCC 749**.

3 The aforesaid petition was disposed of by this Court vide order dated 29.3.2011 with a direction to the petitioner to represent before the respondents and would

show availability of the land in the reserved area for allotment being a displaced person.

4 The petitioner accordingly opted for the land, but the respondents did not take care to allot the land to the petitioner constraining him to file contempt petition being COPC No. 182/2012, which came up for consideration before this Court on 2.7.2013 and disposed of with a direction to the respondents that the land, comprised in murabba No. 158/372 in Chak No.1JKM (Jetsar) in Tehsil Vijaynagar, that had been vacated by the 6-A allottee Smt. Parmeshwari Devi and the possession whereof had been taken by the Government, be allotted to the petitioner because it was the specific stand of the petitioner that the said land had been vacated by Smt. Parmeshwari Devi and possession thereof had been taken over by the respondents. It shall be apt to reproduce the said order, which reads as under:-

“When this case was taken up for hearing, my attention was drawn to paragraph-6 of the counter affidavit filed on behalf of the petitioner. The petitioner states therein that:

“..... The land in murabba No. 158/372 in Chak No.1JKM (Jetsar) in Tehsil Vijaynagar has been vacated by the 6-A allottee Smt. Parmeshwari Devi and the possession has been

taken by the Government but it was not allotted to the applicant/petitioner”.

It is submitted by the learned counsel for the respondents that this very murabba will be allotted to the petitioner. In these circumstances, this contempt petition is disposed of. All miscellaneous applications are also disposed of. Notice discharged.”

5 However, when this order was also not being implemented, the petitioner approached this Court by filing the instant petition.

6 Vide order dated 5.1.2015, a Division Bench of this Court directed the respondents to comply with the directions dated 2.7.2013 passed in COPC No. 182/2012 within eight weeks.

7 The respondents had undertaken to hand over the vacant and peaceful possession of land comprised in murabba No.158/372, measuring 6.200 hectares in terms of the allotment letter, but then the petitioner pointed out that there was some construction existing over the land, which was required to be demolished.

8 Accordingly, this court vide order dated 3.1.2020 directed the respondents to hand over the possession of the land by demolishing the structure and the respondents were further directed to file compliance report.

9 Thereafter, when the matter came up before this court on 12.7.2024, the Court noticed that even though the eviction proceedings had been initiated against one Parmeshwari Devi, who was supposed to be in possession of murabba No.158/372, as aforesaid, and order to this effect had already been passed by the Division Bench of this Court on 11.03.2015. However, vide order dated 11.3.2015, it would be noticed that the liberty had already been granted to the petitioner to opt for another land as finds recorded in the order passed by this court on 12.07.2024.

10 A further perusal of the aforesaid order would go to show that it was after accepting the offer of the respondents that the petitioner opted for land comprised in murabba No.307/448 in Chak No. 18A (B), Anupgarh and the petitioner expressed his willingness to accept the said land as is evidently clear from the aforesaid order. However, when the matter came up for consideration before the Court on 26.07.2024, the learned counsel for the respondents stated that the land comprised in murabba No.307/448 (supra) cannot be allotted to the petitioner as the same belongs to the Animal Husbandry Department.

11 Taking note of this fact, the Court on 12.07.2024 passed the following orders:-

“Even though, the instant contempt petition had been filed against the inaction of the respondents in not handing over the possession of the land comprised in Murabba No. 158/372 in Chak No.1 JKM (Jetsar) Tehsil Vijaynagar that had been vacated by 6-A allottee Smt. Parmeshwari Devi and the possession thereof at the relevant time was stated to have been handed over to the Government. However, lateron, it was found that only eviction proceedings had been initiated against those persons, who were in illegal possession of the land and an undertaking was given to this Court that after their eviction, the possession would be handed over to the petitioner. Four weeks’ time was granted to the respondents to do the needful vide order dated 11.03.2015 passed by the learned Division Bench of this Court. However, in the said order, liberty was granted to the petitioner to opt for another plot. It was also made clear in the aforesaid order that in case he opts for another plot, the respondents may allot him the same within four weeks. It shall be apt to reproduce the relevant portion of the order dated 11.03.2015 which reads as under:

“Mr. Yashwardhan Chauhan, Advocate stated at the Bar that they have initiated eviction proceedings against the persons, who are in illegal possession of the land and after eviction, they will hand over the possession to the petitioner. He seeks and is granted four weeks time to do the needful. It is open for the petitioner to opt for another plot and in case, he opts for another plot, respondents may allot him the same within four weeks from today.”

It was thereafter on 21.05.2015 that the concerned S.D.M. filed a supplementary affidavit for placing on record a communication/latest position regarding the availability of command land (pages 204 to 207 of the paper book). It shall be apt to reproduce para 6 of the affidavit which reads as under:

“6. That the eviction proceedings under the Law have been initiated against the persons who are in possession of Murabba No. 297/449 in Chak No. 16A and Murabba No. 307/448 in Chak No. 18A(B) Anupgarh and Murabba No. 158/372 in Chak No. 1JKM (Jetsar) in Tehsil Vijaynagar. The copies of revenue entries are annexed as Annexure C-6 & C-7 for the kind perusal of this Hon’ble Court. The respondents are furnishing a list of available command land of about 1400 Bighas, and the petitioner can opt for any of the murabba which would be allotted to him at the earliest. That in case the petitioner is still not satisfied with the proposals as given by the respondents then in that event he will have to wait for the vacation of the said murabbas.”

Accepting the aforesaid offer of the respondents, the petitioner opted for land comprised in Murabba No. 307/448 in Chak No. 18A (B) Anupgarh, as is evident from the order passed by the learned Division Bench of this Court on 20.06.2015, the relevant portion whereof reads as under:

“COPC No.4329 of 2013: Learned counsel for the petitioner stated that the respondents be directed to comply with the directions by handing over the possession of the land i.e. Murabba No.307/448 in Chak No.18A(B), Anupgarh, mention of which has been made in paragraph 6 of the supplementary affidavit. The respondents are

directed to do the needful within four weeks and Mr. Y.W. Chauhan, Advocate, to seek instructions.

List on 4th August, 2015.”

Today, the petitioner is present along with his Counsel and states that he would be content in case the respondents hand-over the possession of the aforesaid land i.e. Murabba No.307/448 in Chak No.18A(B), Anupgarh. However, learned counsel for the respondents states that he will have to seek instructions given the fact that this offer was made way back in the year 2015 and there could be chances that the land in question may have been allotted to someone-else. Let positive instructions in this regard be obtained on or before the next date of hearing.

List on 26.07.2024.”

12 In compliance to the aforesaid order, the respondent on 24.08.2024 though did produce certain records, but the Gazettee notifications were not produced constraining the Court to pass the following orders:-

In compliance to the order dated 26.07.2024, the respondents have produced certain records. Let copies thereof be supplied to learned counsel for the petitioner during the course of the day. As regards the Gazette Notifications dated 30.04.1971 and 01.12.1972, the Deputy Secretary, Colonization, Jaipur is directed to produce the same on the next date of hearing along-with an affidavit, explaining as to whether the aforesaid Notifications were in fact taken into consideration, while issuing subsequent Notification dated 26.05.1977, whereby

*Chak No.18A(B), Murabba No.307/448 was allotted to the Animal Husbandry Department.
List on 13th September, 2024.*

13 Thereafter, the time was sought by the respondents to produce before this Court the necessary documents, more particularly Gazettee notification and after perusing those documents, this Court vide order dated 20.12.2024 directed the respondents to place on record copy of letter dated 4.9.2019 on the basis of which, this petition was initially disposed of vide order dated 06.09.2019 which reads as under:-

“The possession of the land in question has been taken over by the State of Rajasthan through its S.D.M., Sri Vijaynagar, as is evident from the communication dated 04.09.2019, placed before this Court by the learned counsel for the respondents.

2. The State of Rajasthan through its Chief Secretary, is directed to ensure that the petitioner is actually put in physical possession of the land in question within four weeks from today.

3. The petitioner apprehends that there could be law and order problem, but the same has already been taken care of by the Hon’ble Supreme Court in its order dated 26.07.1996 in case titled Pradesh Pong Bandh Visthapit Samiti, Rajasthan and another vs. Union of India and others, AIR 1996 SC 3445 wherein it was observed as under:

“30. In its affidavit dated 18th September, 1992, the State of Rajasthan has stated that, it had apprehended a hue and cry if the Rajasthanis

who had taken lands from the allottees were evicted. Whatever the hue and cry that might arise as a result of having to dispossess Rajasthanis from lands allotted to oustees shall be the direct consequence of the deeds of the State of Rajasthan upon which we have adversely commented. It shall be the duty of the State of Rajasthan to ensure the law, maintain order and ensure that the oustee allottee, his family and his belongings are un-harmed.”

4. However, it needs to be clarified that at the time of handing over the possession, the Chief Secretary, Rajasthan, shall ensure that there is no un-necessary law and order problem created by any person(s).

5. At the same time, the Superintendent of Police, District Ganganagar, shall ensure adequate police protection to the petitioner at the time of handing over the possession of the land in question.

6. It is made clear that in case there is failure to comply with the orders of this Court, the same shall be construed to be a contempt of the Court and necessary consequential action shall thereafter follow.

7. The authority concerned where the appeal is pending shall reconsider the matter with regard to grant of status qua the land in question in light of the fact that the lis has already been adjudicated upon and has attained finality right upto the Hon'ble Supreme Court as reported in Pradesh Pong Bandh Visthapit Samiti's case (supra) and continuation of proceedings in such circumstances may amount to contempt of Court.

8. The contempt petition is disposed of with the aforesaid directions. All pending applications stand disposed of.

9. For compliance, to come up on 04.10.2019. Review Petition No.13 of 2014.

10. Since, the petitioners have already taken possession of the land as is evident from the communication dated 04.09.2019, which has been placed on the case file of COPC No. 4329 of 2013 today by the learned counsel for the petitioners, therefore, the review petition has been rendered infructuous and is disposed of as such. Pending application, if any, also stands disposed of.

Copy 'dasti'.

14 Respondents were further directed to clarify as to whether the entire Chak No.18-A(B) had been transferred to Animal Husbandry Department or was it only Chak No.18-A that allegedly had been handed over to Animal Husbandry Department. However, when this information was not forthcoming, then the petitioner through his counsel stated before this Court that he would be content in case the respondents consider the case of the petitioner for allotment of murabba No.297/449 in Chak No.16A. Accordingly, the respondents were directed to consider the case of the petitioner and report compliance on the next date of hearing.

15 Later on, it was noticed that the place Anupgarh had not been mentioned in the order dated 3.1.2025 and accordingly, clarificatory order was passed by this court on 04.01.2025 which reads as under:-

Heard. In the order dated 03.01.2025, mention has been made for allotment of murabba No.297/449 in chak 16A but the place where said chak is situated, has not been mentioned and the place is Anupgarh. Same be read now as "murabba No.297/449 in chak 16A, Anupgarh." Necessary correction be carried out accordingly in the order dated 03.01.2025.

List on 28.02.2025, as already fixed.

16 Thereafter, it was the respondents who sought time to consider the case of the petitioner for allotment of murabba No.297/449 in Chak No.16A in Anupgarh and finally when the matter came up before this Court on 21.3.2025, it was the respondents themselves who placed on record the allotment order dated 19.03.2025 whereby the land comprised in murabba No.297/449 in Chak No.16A in Anupgarh had been allotted to the petitioner but the possession thereof had not been allotted as is evident from the order dated 21.3.2025.

17 The respondents have now moved the instant application for modification of order dated 3.1.2025 as clarified vide orders dated 04.01.2025 and 21.03.2025

on the ground that specific murabba cannot be allotted in favour of the non-applicant and the same is outside the directions passed by this Court and reliance has been placed on some order dated 10.1.2025 passed by the Hon'ble Supreme Court, which is not even *inter se* the parties.

18 I really wonder how this order has any bearing to the instant petition. Even otherwise a perusal of the orders passed by this court from time to time, some of which have been reproduced hereinabove, clearly go to indicate that it was the respondents who at two occasions did not accept the request of grant of land as opted by the petitioner.

19 Further perusal of the order sheets would go to indicate that the respondents themselves did not choose to place on record necessary documents more particularly Gazette notifications etc. when the petitioner's case for grant of land comprised in murabba No.307/448 in Chak No. 18A (B), Anupgarh, was considered and offer whereof had been made by the petitioner way back in the year 2015.

20 Furthermore, it needs to be mentioned that the petitioner had specifically opted for the aforesaid land because the eviction proceeding had already been

initiated by the competent authority qua the said land as is evident from the affidavit filed by the S.D.M, Srivijay Nagar, District Sri Ganganagar, Rajasthan dated 21.5.2015, it shall be apt to reproduce the affidavit in its entirety, which reads as under:-

"1. That the above noted matter was listed before this Hon'ble Court on 11/3/15 when this Hon'ble Court was pleased to pass the following order:-

"Mr. Yashwardhan Chauhan Advocate stated at bar that they have initiated eviction proceedings against the persons, who are in illegal possession of the land and after eviction the land will be handed over to the petitioner. He seeks and is granted Four weeks time to do the needful; It is open for the petitioner to opt for another plot and in case he opts for another plot, respondents may allot him the same within four weeks,"

2. That it is further submitted that when the above noted matter was listed on 11/3/2015, the petitioner was given the option to opt for command land available in the District. It may be brought to the kind notice of this Hon'ble Court that minus those 1188 cases where the land is in possession of 6-A allottees. The legal process to get those lands vacated from the illegal occupants is already under way. The petitioner is insisting on being allotted a particular piece of Murabba from the 1188 disputed land murabbas. As of today it is not possible to accommodate the petitioner in those pieces of land because legal process to get them vacated is in process. Either the petitioner may wait for the vacation of these Lands or may give his consent for grant of command land which is readily available with the respondents in various Tehsils. That

pursuant to the aforesaid orders passed by this Hon'ble Court the Deputy Collector SriVijayNagar addressed a communication to Sh.Ashwani Kumar Sharma dated 19/3/15 & 10/4/15 copies are Annexed as Annexure C-I & C-2 for the kind perusal of this Hon'ble Court. To the effect that the total 1188 muraba cases wherein land is in possession of 6A allotess, the proceedings for eviction are pending at different stages in Courts, therefore it is not possible at this stage to allot you any land out of those 1188 murabas. However you may give your consent for grant of Command Land which is readily available with us in different Tehsils. It may be brought to the kind notice of this Hon'ble Court that Sh.Ashwani Kumar did not give any option but insisted on the murabbas as demanded earlier.

3. In the meanwhile the matter was posted before the Hon'ble Court on 11/5/2015 but due to non availability of the bench on that day the matter was again posted for 12/5/2015 when this Hon'ble Court was pleased to pass the following order:-

"Order passed by this Hon'ble Court on 11.3.2015 has not been complied with by State of Rajasthan. We take serious note of the same. Consequently, the Chief Secretary to the Govt Of Rajasthan is directed to be present in person with records to assist the Court on the next date of hearing. List on 22/5/2015."

4 That the High powered Committee meeting which was held on 30/4/2015 and the issue of 1188 murabas was discussed and as per the minutes of the 17th meeting held on 24/2/14 copy of which is Annexed as Annexure C-3 for the kind perusal of this Hon'ble Court, progress on this issue has been made in High powered committee held on

30/4/205 and there is all possibility that the allottees would be given their due murabba/lands.

5. That it may be brought to the kind notice of this Hon'ble Court that in similar situated cases which were pending before this Hon'ble Court the petitioners in those cases were given the option of Command Land and they have given their option for being allotted land, the copies of such options are placed as Annexure C-4, C-5 for the kind perusal of this Hon'ble Court.

6 That the eviction proceedings under the Law have been initiated against the persons who are in possession of Murabba No.297/449 in Chak No. 16A and Murabba No 307/448 in Chak No 18A (B) Anupgarh and Murabba No 158/372 in Chak No 1JKM (Jetsar) in Teshil Vijaynagar. The copies of revenue entries is Annexed as Annexure C-6 & C-7 for the kind perusal of this Hon'ble Court. The respondents are furnishing a list of available command land of about 1400 Bighas, and the petitioner can opt for any of the murabba which would be allotted to him at the earliest.

That in case the petitioner is still not satisfied with the proposals as given by the respondents then in that event he will have to wait for the vacation of the said murabbas."

21 At this stage, it also needs to be noticed that the Court had asked the respondents to place on record necessary documents indicating steps that had been taken in terms of the aforesaid affidavit, which the respondents failed to do so. It was thereafter after the

petitioner ultimately opted for the land comprised in murabba No.297/449 in Chak No.16A in Anupgarh, which was duly considered and thereafter allotted to the petitioner.

22 In such circumstances, I really fail to understand how this application is maintainable.

23 This Court also needs to notice that the instant application has been filed by new counsel, but even no objection was obtained from the original counsel before filing the instant application and it is only now that such objection has been obtained.

24 What the respondents are actually seeking a review of orders, which is impressible as a question of fact in second inning of the matter cannot be permitted. It is under very exceptional circumstances where it can be demonstrated that on the finding and reasoning so given, there is error apparent on the face of record which can be termed to be mistake within the meaning of error apparent as that can be discovered without any argument, it may be filed by a new advocate but that too after obtaining no objection from earlier counsel. If a case is to be argued on the same set of facts by change of counsel, at several occasions, it may be possible that with imminence of the counsel, a new dimension to the

augment may come on same set of facts. Skill in the argument and advocacy is to vary always from counsel to counsel, but here it needs to be noticed that earlier Mr. R. K. Gautam, learned Senior Advocate with imminence and standing had been representing the respondents and I have no doubt in my mind that it was with his good efforts that the respondents thought it fit to make allotment in question.

25 It is more than settled that mere change of counsel cannot result in change of stand of the respondents.

26 The Hon'ble Supreme Court in ***Tamil Nadu Electricity Board V. N.Raju Reddiar (1997) 9 SCC 736*** has held as under:

".... except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary that court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession."

This principle applies in full force and this

principle is completely non-negotiable.

27 This issue has been considered in detail by a coordinate bench of this Court in **Review Petition No.11/2024, titled as Subhash Chand Mehendra (since deceased) through his LRs vs. State of H.P., decided on 24.4.2025**, wherein after relying upon the judgment in **Tamil Nadu Electricity Board's** case (supra), it was observed as under:-

14.It is unfortunate that this submission has been made by a counsel who had not argued the matter originally before the Court and does not contain any affidavit of the learned counsel who had originally argued the matter. Hence, the subsequent counsel is not in a position to say whether the judgment was cited at the bar or not. It was laid down by the Allahabad High Court in *Jag Mohan Agarwal v. Kanchan Kumari Jain*, 2023 SCC OnLine All 3965 that the review at the instance of the subsequent counsel is not maintainable. It was observed:

9. Learned counsel for applicant has placed reliance upon the judgment of this Court in the matter of *Sharda Prasad Mishra v. State of U.P.* (Writ-A No. 60191 of 2006) decided on 10.10.2013. From the perusal of the said judgment, it is apparently clear that it is not in favour of applicant rather against him. The only fact which is pointed out by learned counsel for applicant is about "No Objection Certificate". In the present case, there is no "No Objection Certificate" in favour of applicant from earlier counsel. Even otherwise, mere obtaining of "No Objection Certificate" is not suffice for filing of review application by a subsequent counsel. Relevant parts of the said judgment is quoted below:—

“When the case was initially heard one Sri. S.K. Singh had appeared for the respondent nos. 2 to 7. This review application has been filed by the learned counsel, who was not the counsel for the respondent when the judgment was passed.

The Supreme Court in the case of Tamil Nadu Electricity Board v. N. Raju Reddier, (1997) 9 SCC 736 : AIR 1997 SC 1005 has held that review petition cannot be entertained at the behest of a counsel or a person, who had not appeared before the Court or was not party in the main case. Para-1 of the judgment reads as under:

“1. It is a sad spectacle that a new practice unbecoming and not worthy of or conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on 24-4-1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as “application for clarification”, on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on - Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No. 2670 of 1996 in CA No. 1867 of 1992, a Bench of three Judges to which one of us, K. Ramaswamy, J., was a member, has held as under:

“The record of the appeal indicates that Shri Su-

darsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would not be in the interest of the profession to permit such practice. That part, he has not obtained "No Objection Certificate" from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to file the review petition. Even otherwise, the review petition has no merits. It is an attempt to reargue the matter on merits. On these grounds, we dismiss the review petition".

The review application is, therefore, not maintainable."

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12. Sri. Harkauli has relied upon the judgment of this Court in Ram Prasad Shukla v. Suraj Lal; (2017) 122 ALR 144, in which Court has clearly held that review application filed by a new counsel who had not argued the writ petition is not maintainable. Relevant parts of the said judgment is quoted below:—

"I also find substance in the submission of the learned counsel for the opposite party that the review petition is not maintainable in view of the fact that it has not been filed by the counsel, who had argued the writ petition. I also find substance in the submissions of the learned counsel for the opposite party that the plea of deposit under section 30(1) or 30(2) was not agitated before the trial court in the written statements. Therefore, now the petitioner cannot travel beyond the pleadings."

13. The very same view is again taken by this Court in the matter of Mohd. Kaleem v. Sumitra Devi; (2021) 144 ALR 651, in which Court has taken specific view that a re-view/recall/modification application filed by subsequent counsel is not maintainable and it is nothing but an attempt to delay the compliance of judgment, therefore, review application is liable to be dismissed with exemplary cost. Relevant parts of the said judgment is quoted below:—

“12. In view of the above, I am of the considered opinion that the review/recall/modification application by a subsequent counsel is not maintainable. It is nothing but to delay the compliance of the judgment, therefore, exemplary cost is required to be imposed upon the applicant for delaying the compliance of judgment.”

14. This issue again came before this Court in Ramesh Kumar Sharma v. Gool Poput; (2021) 8 ADJ 123 in which this Court relying upon the judgment of Apex Court, has held that review application filed by a subsequent counsel is not maintainable. Relevant parts of the said judgment is quoted below:—

“30. The fact as emanates from the record reveals that Sri. Radhey Shyam Dwivedi and Rajesh Dwivedi were counsels representing the applicants. The Court noted the submission advanced by the learned counsel for the respondents in the judgment, therefore, in view of the judgment of Apex Court in the case of (Tamil Nadu Electricity Board) (supra), the review petition at the behest of another counsel is not maintainable. Paragraph 1 of the judgment is being extracted hereinbelow:

.....

.....

33. In the instant case, the matter was argued on behalf of applicants by original counsel, and review was filed by Sri. N.B. Nigam, Advocate who was not the original counsel of the applicants, and even after filing the review, the applicants have changed the counsel and engaged a new counsel Sri. S.K. Chaturvedi. Therefore, this Court is of the view that

the review application is not maintainable.”

15. I have also perused the judgment passed in Kaniz Fatma v. Additional District Judge, [(2008) 70 ALR 361], in which Court has taken very same view that review application cannot be filed by subsequent counsel. Relevant paragraph 25 is quoted below:—

“25. I am therefore of the considered view that once the writ petition has been decided on merits, the scope of review is very limited and successive review applications are not maintainable. The first review application has been filed by a subsequent counsel Sri. Khalil Ahmad without consent of the original counsel who is alleged to have given a wrong undertaking before the Court has neither filed review application nor has appeared in the Court to admit or deny the allegations made against him. It would be laying down a bad precedent to allow successive review applications by subsequent counsel by making allegations against the original counsel engaged initially. In the first review application the Court has considered all the aspects of the matter in its judgment and order dated 20.3.2007 by holding that the matter cannot be reopened by engaging another counsel.”

16. Apex Court in the matter of Tamil Nadu Electricity Board v. N. Raju Reddiar [(1997) 9 SCC 736 : AIR 1997 SC 1005] has reiterated the same view that review application filed by a subsequent counsel is not maintainable. Relevant paragraph 1 is quoted below:—

“1. It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as “application for clarification”, on the specious plea that the order is not clear and unambiguous. When an appeal/special leave peti-

tion is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary to not that court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No. 2670/96 in CA No. 1867/92, a Bench of three Judges to which one of us, K. Ramaswamy, J., was a member, has held as under:

“The record of the appeal indicates that Shri Sudarsh Menon was heard and decided on merits. The Review Petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That part, he has not obtained “No Objection Certificate” from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the “No Objection Certificate” would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the “No Objection Certificate” from the erstwhile counsel has disentitled him to file the Review Petition. Even otherwise, the Review Petition has no merits, It is an attempt to reargue the matter on merits. On these grounds, we dismiss the Review Petition.”

17. This Court in the matter of *Sidheswar Mishra v. State of U.P.* [(2006) 9 ADJ 427] has also reiterated the settled provisions of law and held that review application filed by a subsequent coun-

sel is not maintainable. Relevant paragraph 14 is quoted below:—

14. The Court is not inclined to open 'Pandora's Box' for the following reasons-

Firstly : The law is well settled that recall or review application can be filed only by the counsel who had argued the case and not by a subsequent counsel who is engaged after the decision.

Secondly : The recall application in the instant case is in the nature of review application as the judgment has been delivered on merits after hearing the counsels for the parties and the prayer is to recall the judgment and hear on merits again.

Thirdly : When the recall filed by Sri. Ranjeet Saxena was listed Sri. Brij Lal Verma could not have been authorized by Sri. Ranjeet Saxena to argue the application and the case on merits, the following reasons.

(a) Sri. Ranjeet Saxena is appointed by the Corporation on its panel to argue to argue its cases and Sri. B.L. Verma. The U.P. Power Corporation is a Estate within the meaning of Article 12 of the Constitution and the position of a counsel on its panel is Akur standing counsel appointed by the Government.

(b) Along with standing counsels, brief holders are also appointed by the State Government. If the Corporation had not appointed any brief holders the counsel on the panel cannot handover his government brief to any counsel who is not on the panel to argue government brief.

(c) In any event it was the duty of Sri. Ranjeet Saxena to have been present to argue the recall application filed by him in order to avoid excuse again by the Corporation that case was argued by Sri. B.L. Verma who is not on its panel and not by Sri. Ranjeet Saxena who is on the panel of thue Corporation.

(d) It is very easy to allege by a subsequent counsel that information to his client was not given. If that be the case the recall application ought to have been filed through Sri. R.D. Khare. Consequently

the case after the judgment has been allotted to Sri. Ranjeet Saxena by the Corporation to get recall of order and judgment dated 31.1.2006.”

18. Similar issue came before this Court in the matter of Rajesh Kumar Tiwari v. UP Shiksha Parishad (Service Single No. 7775 of 2005), in which after considering different judgments, this Court has held that review/recall/modification application filed by a subsequent counsel is not maintainable. Relevant part of the said judgment is quoted below:—

“4. On perusal of aforesaid judgments, it is evident that review/recall/modification application by a subsequent counsel is not maintainable.”

19. From the perusal of aforesaid judgments, intention of the Courts are very much clear that in case such review applications are entertained, it would be unending process with permission to opening of new Pandora Box. Undoubtedly, if the case is filed and argued by a counsel, he is the only person to file review application for the reasons that he is aware about the facts and grounds argued before this Court. This cannot be agitated by a subsequent counsel who has no concern with the matter till the final disposal of the case. Therefore, such practice of engagement of new counsel for filing review/recall/modification must have been depreciated. Further, granting such permission would be gross misuse of process of law and an attempt to raise new arguments for re-hearing of case on merits.

15. A similar view was taken in Yuvraj Singh vs. Harninder Singh and Ors. (12.08.2024 - PHHC) : MANU/PH/2593/2024, Manoj Kumar Sharma v. State of Chhattisgarh, 2025 SCC OnLine Chh 3459, Arjun v. Dharamdas, 2024 SCC OnLine Bom 3539, Pushpalatha v. Anandakrishnan, 2023 SCC OnLine Mad 2289 and Maya Sinha v. Somendra Singh, 2018 SCC OnLine Cal 5829.”

28. After all, a counsel is only a spokesman of the respondent(s) and once the counsel representing the respondents had acted as per instructions of the respondents by not only acceding to the request of the petitioner for grant of land comprised in murabba No.297/449 in Chak No.16A in Anupgarh but also placing on record the allotment letter to this effect dated 19.3.2025, the respondents cannot be heard to complain in the matter that too by placing on record selective documents.

29 The instant proceedings are pending adjudication for the last more than 12 years and the petitioner by now is aged about 78 years, who has lost his entire hearth and home in District Kangra and the respondents are yet to settle him. The Court cannot shut its eyes to the plight of the petitioner as for no rhyme or reason he has been made to suffer that too solely at the instance of the respondents.

30 This insensitivity of the respondents does not augur well with the system much less with the Court. The Court hopes and trusts that the respondents shall now not create any impediment in the way of the petitioner so that he can live peacefully for the remainder of his life.

31 Accordingly, the instant application is dismissed and the applicants/respondents are directed to hand over the vacant and peaceful possession of the aforesaid land in question on **24.7.2025 at 11.00 A.M.** at the spot. The Chief Secretary to the Government of Rajasthan shall ensure that there is no unnecessary law and order problem created at the spot for handing over the possession and khatedari to the petitioner. The Superintendent of Police, Anupnagar shall also ensure that adequate police protection is given to the petitioner at the time of handing over of the vacant possession, as aforesaid. In case there is any potential threat in future, the concerned Superintendent of Police shall also ensure adequate police protection to the petitioner. The superintendent of Police, Kangra, is also directed to give adequate police protection to the petitioner at the time of his visit to Anupgarh in terms of the aforesaid order.

32 A copy of this order shall be communicated by the respondents themselves to the aforesaid Chief Secretary as also the Superintendent of Police.

33 For compliance, list on 01.8.2025.

(Tarlok Singh Chauhan)
Judge

11.7.2025
(yogesh/pankaj)