

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Writ Misc Application No. 30/2025

Sheetal Phophliya, W/o Sh. Akhil Phophliya, Aged About 36
Years, R/o 36, Durga Vihar, Pal Link Road, Jodhpur

----Petitioner

Versus

1. Balaji Nagar Vikas Samiti, Opposite Pal Balaji Pal Road Jodhpur Through Its President Heeral Lal Kularia S/o Amra Ram, Aged About 69 Years, Resident Of 33, Pal Balaji Nagar, Tehsil And District Jodhpur (Raj.).
2. Shyam Lal S/o Fusa Ram Megwal, Shiv Dhuna, Village Basni Nikuba, Post Nandada Kalan Tehsil And District Jodhpur.
3. Jodhpur Development Authority Jodhpur, Through Its Secretary.

----Respondents

For Petitioner(s) : Mr. Gaurav Choudhary for
Mr. Muktesh Maheshwari

HON'BLE MS. JUSTICE REKHA BORANA
Order

05/02/2025

1. The present misc. application has been filed praying for recalling of the order dated 19.09.2024 passed by this Court in S.B. Civil Writ Petition No.14919/2024.
2. Vide order dated 19.09.2024, on a submission been made by the parties present in person before the Court as well as the submission made in the application for withdrawal of the writ petition to the effect that a compromise has been entered into between the parties, the Court permitted the petitioner to withdraw the writ petition. Vide the said order, the original suit No.107/2021 (Shyamlal vs. Jodhpur Development Authority) was also permitted to be withdrawn and was dismissed as such.
3. Learned counsel for the applicant submits that in fact Shyamlal i.e. the plaintiff in suit No.107/2021 had already

cancelled the agreement to sell dated 24.09.1996 on basis of which he had filed the suit for injunction. Meaning thereby, the document i.e. agreement to sell, on basis of which he had filed the suit, itself was subsequently cancelled by him on 15.03.2024. Therefore, no cause to continue the suit even survived to him.

4. Counsel further submits that an application under Order 1 Rule 10, CPC was filed in the said suit by the writ petitioner-society which was dismissed against which the present Writ Petition No.14919/2024 was filed. Meaning thereby, the petitioner-society was not even a party to the suit.

5. Counsel submits that in fact, the present applicant is the owner of the property in question as, after the cancellation of the agreement to sell by Shyam Lal on 15.03.2024, the said property was sold out by the original owner to the present applicant vide registered sale deed dated 15.04.2024.

6. The petitioner-society as well as respondent Shyam Lal, in connivance, without disclosing all the above facts, moved an application before this Court with a submission that the matter has been compromised between them and as per the compromise, plaintiff-respondent No.1 Shyam Lal shall not object to the user of the property in question as a public utility/path and further that Jodhpur Development Authority shall be at liberty to proceed for removal of the illegal structure/construction whatsoever raised in the land in question.

7. Counsel submits that in fact Shyam Lal had nothing to do with the land in question and it is the present applicant who is the owner of the land and had even constructed her residential house on the same. The petitioner-society and respondent No.1

connivingly obtained the order dated 19.09.2024 and because of the said order, in the suit as filed by the applicant, the temporary injunction application has been rejected by the learned Trial Court on the sole ground of the order dated 19.09.2024 passed by this Court.

8. Learned counsel further submits that even an application under Order 7 Rule 11, CPC has been filed on behalf of the petitioner-society in the said suit for rejection of the plaint on count of the order dated 19.09.2024 having been passed by this Court.

9. With the aforesaid submissions, counsel submits that the order dated 19.09.2024 having been obtained by fraud and by concealing the material facts from this Court, deserves to be recalled.

10. In view of the submissions made, Issue notice. Notices be filed within a period of one week and be made returnable on 27.02.2025.

11. Counsel for the applicant shall be at liberty to serve one copy of the application on counsel Mr. Moti Singh as well as counsel Mr. Manas Khatri who represented the respondents in the writ petition.

12. Meanwhile, effect and operation of the order dated 19.09.2024 passed in S.B. Civil Writ Petition No.14919/2024 shall remain stayed.

(REKHA BORANA),J