

GAHC010257142022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./11/2023

SHIW NATH SINGH
SON OF LATE BANARASI SINGH
PERMANENT RESIDENT OF SBI COLONY
MANAV KALYAN ROAD
TINSUKIA
DISTRICT- TINSUKIA
PIN- 786125.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE URBAN DEVELOPMENT DEPARTMENT
GOVERNMENT OF ASSAM
JANATA BHAWAN
1ST FLOOR D-BLOCK
DISPUR
GUWAHATI- 781006
KAMRUP(M)
ASSAM.

2:TINSUKIA MUNICIPAL BOARD
GOVERNMENT OF ASSAM

REPRESENTED BY ITS CHAIRMAN
GNB ROAD
TINSUKIA

DISTRICT- TINSUKIA
PIN- 786125
ASSAM.

3:THE EXECUTIVE OFFICER
TINSUKIA MUNICIPAL BOARD
GOVERNMENT OF ASSAM

GNB ROAD
TINSUKIA

DISTRICT- TINSUKIA
PIN- 786125
ASSAM.
4:TINSUKIA DEVELOPMENT AUTHORITY
REPRESENTED BY ITS PRESIDENT
CHALIA NAGAR

TINSUKIA
PIN- 786125.
5:THE DEPUTY COMMISSIONER
TINSUKIA
OFFICER OF THE DEPUTY COMMISSIONER
GOVERNMENT OF ASSAM

TINSUKIA
PIN- 786125.
6:RISHU KALANTRI
SON OF SRI RAJESH KALANTRI

SBI COLONY
MANAV KALYAN ROAD

TINSUKIA
PIN- 786125.
7:THE CIRCLE OFFICER
TINSUKIA REVENUE CIRCLE
TINSUKIA
PIN- 786125.
8:THE ASSISTANT ENGINEER
TINSUKIA MUNICIPAL BOARD
GOVERNMENT OF ASSAM

GNB ROAD
TINSUKIA

DISTRICT- TINSUKIA

PIN- 786125
ASSAM.

Advocate for : MR. M MORE
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

23.01.2023

Heard Shri PK Sharma, learned counsel for the review applicant, who by means of this petition has prayed for review of the order dated 31.10.2022 passed by this Court in WP(C)/227/2022.

2. Also heard Ms. M. Barman, learned State Counsel for the respondent nos. 1, 3, 4, 5, 7 & 8 and Shri S. Chamaria, learned counsel for the respondent no. 6, who was the writ petitioner in the connected WP(C)/227/2022.

3. The order which has been sought to be reviewed dated 31.10.2022 has been placed before this Court.

4. It appears that the review applicant was the respondent no. 5 in the writ petition. The writ petition was filed by the writ petitioner challenging the inaction on the part of the Tinsukia Municipal Board on his complaint lodged on deviation in a construction made by the respondent no. 5. The writ petitioner had alleged that there were major deviation and violation of the building bye laws for which the petitioner was suffering hardships and prejudice and accordingly had lodged the complaint which was not acted upon leading to filing of the writ petition.

5. Though the respondent no. 5 had contested the writ petition by engaging a learned counsel, the order dated 31.10.2022 itself records that there was continuous default on the part of the respondent no. 5 in appearing in spite of names of the learned counsel reflected in the cause-list. It further appears that the Court had to adjourn the matter on some earlier occasions in the interest of justice due to the said absence of the respondent no. 5. However, vide the order dated 31.10.2022 on noticing further default on the part of the respondent no. 5, the writ petition was

taken up for final disposal by directing that appropriate action would be taken on the basis of the complaint and the Field Verification Report dated 29.03.2022 which was placed on record by the learned State Counsel. This Court had also noted that the Field Verification Report dated 29.03.2022 was not the subject matter of challenge by the respondent no. 5, review applicant. This Court had accordingly passed the following direction:

“In view of the clear findings which, till now have not been challenged by the affected respondent no. 5, the respondent authorities namely Tinsukia Municipal Board are directed to take appropriate steps and action in accordance with law by noting the deviations found and recorded in the Field Verification Report. The steps be taken expeditiously and within an outer limit of 6 (six) weeks from today as the initial complaint were filed long time back.”

6. Shri Sharma, learned counsel for the review applicant has submitted that on principle there may not be any error apparent on the face of the records. However, the inability of the respondent no. 5 to appear was because of his illness and in this connection he has been also annexed certain medical documents. In the opinion of this Court, the aforesaid reason that the respondent no. 5 was suffering from certain ailment shall not be a good enough reason for his learned counsel not to appear. In fact, it is seen that the default was a continuous one and this Court cannot be led to a situation wherein countless adjournment would be required to be given for appearance of the parties in spite of the fact that the Vakalatnama was filed which was still valid.

7. Shri Chamaria, learned counsel for the opposite party / writ petitioner further submits that the order sheet of the writ petition would reflect that the default of the respondent no. 5 was continuous.

8. The role and function of a Review Court is a limited. At this stage, it would be beneficial to refer to certain case laws of the Hon'ble Supreme Court.

9. In the case of ***Kamlesh Verma Vs. Mayawati & Ors.*** reported in **(2013) 8 SCC 320**, the following have been laid down by the Hon'ble Supreme Court:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

10. In a recent decision dated 18.08.2022 in the case of, ***S Madhusudhan Reddy Vs. V Narayana Reddy & Ors.***, reported in ***(2022) SCC OnLine 1034***, a Three Judges’ Bench of the Hon’ble Supreme Court has reiterated the aforesaid law laid down in the case of ***Kamlesh Verma*** (*supra*).

11. It is a settled position of law that to maintain a review petition, the conditions precedent have to be there i.e., error apparent on the face of the records, discovery of new facts which were not within the knowledge of the review applicant and would have a material bearing in the adjudication and thirdly, for any other sufficient reasons.

12. In the case of ***Shivdev Singh & Ors. Vs. State of Punjab & Ors.***, reported in ***AIR 1963 SC 1909***, the Hon’ble Supreme Court has clarified that there is no restriction in Article 226 of the Constitution of India for exercising the power of review as, it is a Court of plenary jurisdiction. However, it has been held that there are definitive limitations and are not to be exercised on the ground that the decision was erroneous on merits, as the same could be a matter within the domain of an Appellate

Court. It has further been clarified that a review power should not be confused with appellate power which may enable an Appellate Court to correct all matters of error committed by a subordinate court.

13. The aforesaid view has been uniformly followed by the Hon'ble Supreme Court, including in the landmark case of ***Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma***, reported in **(1979) 4 SCC 389**, a case which had gone from this High Court.

14. Applying the aforesaid yardsticks, this Court is of the considered opinion that the applicant has not been able to fulfill any of the condition making out a case for review of the earlier order dated 31.10.2022 passed in WP(C)/227/2022. There is neither discovery of any new facts nor a case that facts could not be procured in spite of due diligence of the applicant. The reasons projected also do not fall within the ambit of sufficient reasons.

15. In that view of the matter, the review petition stands dismissed.

JUDGE

Comparing Assistant