

GAHC020000922022



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

Case No. : Review.Pet. 3/2021

1:SAMYAN BAPTIST EKHUMKHO AND 2 ORS
VUNGOJU
WOKHA TOWN
NAGALAND - 797111

2: TCHUPHYANGZU BAPTIST EKHIMKHI

NST COLONY
WOKHA TOWN
NAGALAND - 797111

3: TIYICHAN LOTHA BAPTIST CHURCH EKHUMKHO
SARON COLONY
WOKHA TOWN
NAGALAND - 797111
VERSUS

1:MR. ORENVUNGO HUMTSOE AND 6 ORS
CONVENOR
LEGAL CELL COMMITTEE
WOKHA TOWN BAPTIST CHURCH
WOKHA TOWN
NAGALAND

2:MR. MERIBEMO OVUNG
MEMBER
LEGAL CELL COMMITTEE
WOKHA TOWN BAPTIST CHURCH
WOKHA TOWN
NAGALAND

3:MS. SHANCHOBENI OVUNG
MEMBER
LEGAL CELL COMMISTEE
WOKHA TOWN BAPTIST CHURCH
WOKHA TOWN
NAGALAND

4:WOKHA TOWN BAPTIST CHURCH
WOKHA TOWN
NAGALAND
REPRESENTED BY ITS CONVENOR
LEGAL CELL COMMITTE

5:THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND
KOHIMA

6:THE HOME COMMISSIONER
GOVT. OF NAGALAND
KOHIMA - 797001

7:THE DEPUTY COMMISSIONER
WOKHA
NAGALAND

Advocate for the Petitioner : C. T. JAMIR
SR. ADV
Advocate for the Respondent : A. ZHIMOMI

Linked Case : I.A.(Civil) 13/2022

1:MR. ORENVUNGO HUMTSOE AND 3 ORS
CONVENOR, LEGAL CELL COMMITTEE,
WOKHA TOWN BAPTIST CHURCH, WOKHA TOWN - 797111,
NAGALAND

2: MR. MERIBEMO OVUNG

MEMBER
LEGAL CELL COMMITTEE
WOKHA TOWN BAPTIST CHURCH
WOKHA TOWN - 797111

NAGALAND

3: MS. SHANCHOBENI OVUNG

MEMBER
LEGAL CELL COMMITTEE
WOKHA TOWN BAPTIST CHURCH
WOKHA TOWN - 797111
NAGALAND

4: WOKHA TOWN BAPTIST CHURCH

REPRESENTED BY ITS CONVENOR
LEGAL CELL COMMITTEE
WOKHA TOWN - 797111
NAGALAN

VERSUS

1:SAMYAN BAPTIST EKHUMKHO AND 5 ORS
VUNGOJU, WOKHA TOWN - 797111, NAGALAND

2:TCHUPHYANGZU BAPTIST EKHUMKHO
NST COLONY
WOKHA TOWN - 797111
NAGALAND

3:TIYICHAN LOTH BAPTIST EKHUMKHO
SARON COLONY
WOKHA TOWN - 797111
NAGALAND

4:THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND
KOHIMA - 797001
NAGALAND

5:THE HOME COMMISSIONER
GOVERNMENT OF NAGALAND

KOHIMA - 797001
NAGALAND

6:THE DEPUTY COMMISSIONER
WOKHA TOWN - 797111
NAGALAN

Advocate for the Petitioner : A. ZHIMOMI

Advocate for the Respondent :

Linked Case :

BEFORE
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO

JUDGMENT & ORDER (CAV)

Date : 24-02-2023

Heard Mr. A. Zhimomi, learned counsel appearing for the applicants in the IA, and Mr. C.T. Jamir, learned senior counsel appearing for the opposite party in the IA and the applicant in ReviewPet./3/2021. Also heard Ms. V. Suokhrie, learned Addl. AG appearing for the State.

2. The IA and the Review Petition are connected; therefore, they are being disposed of by this common judgment and order.

The facts and circumstances leading to the filing of the Review

Petition and the connected IA are as follows.

The Wokha Town Baptist Church which was established in the year 1919, in the course of time, increased in the number of its membership therefore, it became necessary to establish sector churches. Accordingly, three sector churches under its own establishment namely, Wokha Town Baptist Church, Vungoju Sector Church was established in 1990, and two more namely, Wokha Town Baptist Church, NST Sector and Wokha Town Baptist Church, Saron Sector were established in the year 1998. With the passage of time the desire to function independently grew among the sector churches and as such, they requested the Wokha Town Baptist Church for the same. The Wokha Baptist Church, in two of its General Meetings held in the year 2017 and 2018, decided to allow the sector churches to be independent churches after the celebration of Centennial Jubilee. In order to fulfil the decision taken in the two General Meetings, a committee was constituted by the Deacon Board of Wokha Town Baptist Church on 02.02.2020, *i.e.* soon after the celebration of the Centennial Jubilee, to work out the modalities for releasing the Sector Churches. Since there was some delay in implementing the decision of the General Meetings, the three Sector Churches approached the Lotha Baptist Churches Association which is the Apex body of all the Lotha Baptist Churches, for recognition. The Lotha Baptist Churches Association, in its Executive Meeting held on 11.11.2020 resolved to consider recognition of the three Sector Churches as independent churches. While the matter was pending at that stage the names of

the three sector churches were changed as follows: 1) Sector Church Vungoju to Samyan Baptist Ekhumkho, Vungoju, 2) Sector Church, NST colony to Tchuphyangza Baptist Ekhumkho, and 3) Sector church, Saron colony to TiyyichanLotha Baptist Ekhumkho, Saron colony. Thereafter, the Lotha Baptist Churches Association *vide* Temporary Appointment Order dated 08.02.2021 issued by its Executive Secretary, appointed three reverends to look after the newly established churches, each one for one of the churches. Following issuance of the appointment order, the Lotha Baptist Churches Association *vide* letter dated 09.02.2021, which was also issued by its Executive Secretary informed the newly established three churches that they are not authorized to make use of any land, buildings, property of Lotha Town Baptist Church, unless the Church consents to it. On the same day, *i.e.* 09.02.2021 representatives of Wokha Town Baptist Church under the name and style "Legal Cell, Wokha Town Baptist Church" submitted an application to the Deputy Commissioner, Wokha to restrain the members of the three sector churches from organizing any activities in the premises of the three sector churches. On receipt of the same, the Deputy Commissioner issued a Letter of Appeal dated 09.02.2021 requesting all the church workers, church leaders and elders to restrain members of the church from resorting to any act of violence, intimidation or vandalism in order to maintain peaceful atmosphere in the town. Thereafter, on 12.02.2021 the Deputy Commissioner, through a Circular dated 11.02.2021, convened a Consultative Meeting to discuss on the situation arising out of the issues concerning the Wokha Town Baptist Church. In that meeting Lotha Hoho, Lotha Elo

Hoho, Lotha Students Union and Colony Chairmen under Wokha Town were present and as per the decision taken in the meeting the following order was issued by the Deputy Commissioner, Wokha:

**"Government of Nagaland
Office of the Deputy Commissioner
Wokha : Nagaland**

No. JUDL-75/WTBC/2021 Dated: Wokha the 12th Feb.' 2021

ORDER

As unanimously resolved in the consultative meeting held with Lotha Hoho, Lotha Eloehoho, Lotha Students Union and Colony Chairman under Wokha Town on 12th February 2021, with a view to maintaining Law and Order and peaceful atmosphere in Wokha Town, that could be disturbed due to the ongoing issue in the Wokha Town Baptist Church and the 3 (Three) sector Churches, the following arrangement for normal worship days is brought out as below:

SL.NO.	WORSHIP DAYS	GROUP-A	GROUP -B
1	Wednesday	4PM to 5PM	2:30-3:30PM
2	Thursday	4PM to 5PM	2:30-3:30 PM
3	Saturday	4PM to 5PM	2:30-3:30PM
4	Sunday	11AM to 12AM	9-10 AM

The Church keys shall be retained by the Sector Church Chowkidar (WTBC) and shall open the church on time for worship by both the parties. All concerned parties shall strictly follow the above arrangement.

This order comes into immediate effect and shall continue till the matter is resolved by the Wokha Town Baptist Church and the Lotha Baptist Churches Association.

Sd/-
(ORENTHUNG LOTHAS)
Deputy Commissioner
Wokha:Nagaland
Dated: Wokha the 12th Feb.' 2021"

3. Aggrieved by the above given Order of the Deputy Commissioner, Wokha the Wokha Town Baptist Church submitted an application dated 13.02.2021 for a review of the same on the grounds that the Order was passed without taking into consideration- the ground realities and without seeking their opinion inspite of being a stakeholder, and that the three sector churches have been given the right to occupy the church buildings and the premises at the three sectors without any right to do so as they have delinked themselves from the mother Church and also that, the Order has interfered in the affairs of the church, which is a religious institution. Since there was no response, the Wokha Town Baptist Church, represented by its Legal Cell Committee members filed WP(C)/69/2021 before this Court challenging the order dated 12.02.2021 of the Deputy Commissioner, Wokha on the grounds given here below:

i) That the order was passed behind the back of the Wokha Town Baptist Church and the three Sector Churches without issuing any show-cause notice and without any opportunity of being heard given to them; therefore, it violates the Principle of Natural Justice.

ii) That the order is arbitrary and illegal as it did not only infringe upon the right of the churches to administer their own affairs but also has permitted the members of the newly formed churches to conduct worship in the premises of the church of the petitioners. When the petition was moved on 07.04.2021 the

following order was passed in which impugned order dated 12.02.2021 of the Deputy Commissioner, Wokha was suspended till the returnable date.

**"WP(C)/69/2021
BEFORE
HON'BLE MR. JUSTICE S. HUKATO SWU
ORDER**

07.04.2021

This is a writ petition under Article 226 of the Constitution for issuance of a writ of mandamus or certiorari or any other appropriate writ for a direction to the respondents as to why the order dated 12/2/2021 should not be quashed and set aside.

The facts leading to the filing of the writ petition is that the Wokha Town Baptist Church (WTBC) was established in the year 1919 and as years went by and with the growth of population, 3 Sectors Churches were set up under the aegis of Wokha Town Baptist Church, one Church being established in the year 1990 while 2 Sector Churches were established in the year 1988. In the year 2019 December there was a meeting for giving independence to the 3 sector churches independently. However, pending the exercise the lockdown disturbed the process. In the meantime, on 7/2/2021, the respondent nos. 4, 5 and 6 who are the members of Sector Churches have approached the Lotha Baptist Churches Association for giving the recognition and by letter dated 8/2/2021, the Lotha Baptist Churches Association recognized the independence of the 3 Sector Churches by appointing temporary pastors. So many misunderstanding was created among the newly created church sectors and the Wokha Town Baptist Church. Seizing the opportunity the respondent no. 3 called for a meeting comprising of several organizations Superintendent of Police, Wokha, the Chairman Lotha Hoho, the Chairperson, Lotha Eloie Hoho, the President Lotha Students Union, all Chairman of colonies under Wokha Town and Village Council Chairman, Wokha Village and Longsa Village etc. This was issued by a Circular dated 11/2/2021. Thereafter, by an order dated 12/2/2021 No. JUDL-75/WTBC/2021, the impugned order was passed. The order reads below:-

**'Government of Nagaland
Office of the Deputy Commissioner
Wokha: Nagaland
No. JUDL-75/WTBC/2021 Dated: Wokha the 12th Feb.' 2021
ORDER**

As unanimously resolved in the consultative meeting held with Lotha

Hoho, Lotha Eloie Hoho, Lotha Students Union and Colony Chairman under Wokha Town on 12th February 2021, with a view to maintaining Law and Order and peaceful atmosphere in Wokha Town, that could be disturbed due to the ongoing issue in the Wokha Town Baptist Church and the 3 (Three) sector Churches, the following arrangement for normal worship days is brought out as below:

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The Church keys shall be retained by the Sector Church Chowkidar (WTBC) and shall open the church on time for worship by both the parties. All concerned parties shall strictly follow the above arrangement.

This order comes into immediate effect and shall continue till the matter is resolved by the Wokha Town Baptist Church and the Lotha Baptist Churches Association.

Sd/-
(ORENTHUNG LOTH)
Deputy Commissioner
Wokha : Nagaland
Dated: Wokha the 12th Feb.' 2021'

By this order, the petitioner's right to manage their religious affair was breached. The petitioners were not among those invitees who were called for taking a decision in the crucial meeting dated 12/2/2021. It is an order which concerns the proprietorial rights of the petitioners over the church bodies. There upon the Convenor, Wokha Town Baptist Church filed a representation dated 13/2/2021 to review the impugned order. However, till date there is no step taken by the respondent no. 3. It is pertinent to mention here that the Lotha Baptist Churches Association which is the Apex organization of the Lotha Churches has by letter dated 9/2/2021 written to the 3 Sector Churches that they should not make use of any land, building, property of the Wokha Town Baptist Church unless the Wokha Church consents to give any property from their possession. This is contained as follows:-

'To

1. Tephuphyangza Baptist Church, NST Colony, Wokha Nagaland.
2. Samyan Baptist Church, Vungoju, Wokha Town
3. TiychanLotha Baptist Church, Saron Colony, Wokha Town

Subject: Appeal Letter

Greetings in the name of our Lord

Since you have separated and created an independent church from WTBC, you are not authorized to make use of any land, buildings, property of WTBC unless the Church consents to give you any property from their possession.

Thanking you

Sd/-

(Rev. I. Tsanso)

Executive Secretary, LBCA

No. LBCA/ES/Churches/2021-004 Dt. LBCAOkying the 09th Feb. 2021

Copy to:

1. LBCA President for information
2. Rev. Abemo Jungio, Pastor Wokha Town Baptist Church for information
3. Guard File
4. Office Copy

Sd/-

(Rev. L. Tsanso)

*Executive Secretary,
LBCA*

Even appeal by the Apex organization of the Lotha Church was not considered by the respondents. Having left with no other remedy and aggrieved by the order dated 12/2/2021 passed by the respondent no. 3 the present writ.

The order which is divisive in nature and against the provisions of Articles 226 of the Constitution, the petitioners are before us praying for writ of mandamus or any other appropriate writ. In the meantime, the petitioners have also prayed for stay of the order dated 12/2/2021 passed by the respondent no. 3.

The learned Sr. Government Advocate Mr. Moa Imchen appears on behalf of the State respondent nos. 1 to 3. Notice upon respondent nos. 1

to 3 is deemed complete. However, the petitioner shall furnish copies of the writ petition to the learned Sr. Government Advocate during the course of the day.

Issue notice to respondent nos. 4 to 6 by registered post returnable within 4 weeks with A/D Card.

In the meantime the order dated 12/2/2021 passed by the respondent no. 3 shall be kept suspended till the next returnable date.

List the matter after 4 weeks.

JUDGE"

4. After the Notice was issued the matter came up for hearing on 16.09.2021 and during the hearing Mr. C.T. Jamir, learned senior counsel appearing for the private respondents (the 3 sector churches) submitted that the Lotha Baptist Churches Association which is the Apex body of the Baptist Churches among the Lothas, through a letter dated 14.08.2021 has informed the respondents that the Association's Executive Committee in its meeting held on 13th and 14th August 2021 has recognized them as independent, full-fledged churches with all liberty and privileges accorded therewith; in view of this development and the fact that the churches already have their own church buildings they will start worshipping separately in those buildings. Therefore, by keeping the WP(C) pending no purpose will be served, and as such, it may be disposed of. Mr. Luikham, learned counsel appearing for the writ petitioners submitted that though the respondents may have been recognized as independent churches they may still come to the mother church for worship and in that event there are chances that misunderstanding may again crop up which may lead to Law and Order

problem. Mr. C.T. Jamir replied by submitting that since the respondents have their own church buildings they have no intention to go back to their mother church for worship. Taking into account the facts and circumstances leading to the filing of the writ petition and the new development that had taken place this Court disposed the writ petition with a direction given to the Deputy Commissioner, Wokha to hand over the keys of the churches to the respective functionaries so that the parties may be able to worship in their respective church buildings and to start functioning independently. The Order is reproduced here below:

"WP(C)/60/2021
BEFORE
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO
O R D E R

16.09.2021

Heard Mr. N.K. Luikham, learned counsel for the petitioners and also heard Mr. C.T. Jamir, learned Sr. Counsel appearing for the private respondents and Moa Imchen, learned Addl. Sr. Government Advocate appearing for the State respondents.

The brief facts and circumstances leading to the filing of this writ petition as submitted by the learned counsel are as follows:

Wokha Town Baptist Church which is the mother church of all the Baptist Churches in Wokha Town, in course of time has increased in the number of its members, therefore the three respondents who initially came into existence as fellowships under its fold, wanted to have their own independent entity for better management and growth. Therefore, the mother church in a meeting held on 30.12.2016 decided to release them as independent churches after having a meeting and after the celebration of 100 years anniversary. Thereafter, in a meeting held on 25.03.2017 the Wokha Town Baptist Church Deacons' Board decided to release them after celebration of 100 years on 28th and 29th December, 2019. The resolution/decision of Deacons' Board stated above was approved by the General Body of the mother church on 25.03.2017. However, releasing of the three churches as independent church did not happen even after the celebration of 100 years anniversary. Therefore, the respondents approached

the Lotha Baptist Churches Association for their intervention. In the process some misunderstanding between the parties happened and the writ petitioners approached the Deputy Commissioner, Wokha for intervention. After hearing the parties, the Deputy Commissioner passed the order dated 12.02.2021 wherein certain arrangements was purportedly made to facilitate worship for all the parties at different times. But being aggrieved by the arrangement so made by the Deputy Commissioner, the petitioners came before this Court by filing the instant writ petition challenging the same.

When the matter came up for hearing today, Mr. C.T. Jamir, learned Sr. Counsel appearing for the respondents submitted that certain developments had taken place during the pendency of this writ petition and in view of the same, the writ petition can be disposed of at this stage.

Mr. C.T. Jamir submitted that, the Lotha Baptist Churches Association which is the Apex body of all the Baptist Churches among the Lotha through the letter dated 14.08.2021 has informed the respondents that the Association's Executive Committee in its meeting held on 13th and 14th August, 2021 has recognized them as independent, full-fledged local church under the Lotha Baptist Churches Association with all liberty and privileges accorded by the Association and accordingly, the churches recognition certificates had also been issued. In view of the recognition by the Apex Body, the respondents who are already having their own church buildings will start worshipping separately in those buildings.

Mr. N.K. Luikham, learned counsel for the petitioners admitted that the respondents have been recognized as independent full-fledged churches by the Lotha Baptist Churches Association but submitted that, though they may be recognized as independent churches they might still come to the mother church for worship and in that event there are chances that misunderstandings may once again crop up which may create law and order situation. To this, Mr. C.T. Jamir, learned Sr. Counsel submitted that the respondents have their own church buildings and they have no intention to go back to the mother church for worship.

In view of the submissions of the learned counsels and the developments that are stated to have taken place, this Court is of the view that no purpose would be served by keeping the writ petition pending. Therefore, it is disposed of with a direction to the Deputy Commissioner, Wokha to hand over the keys of the churches to the respective functionaries so that the parties may be able to worship in their respective church buildings and start functioning independently.

In view of the disposal of this writ petition, the interim order passed earlier shall no longer have any force.

JUDGE"

5. After the above order was passed the three new Sector churches which are now recognized as independent churches by the Lotha Baptist Churches Association has come before this Court once again through the Review petition on 22nd September 2021 praying for modification or alteration of the order so as to give them right and title over the apartment buildings, Sunday school buildings, Staff quarters and kitchens that are claimed to have been theirs. On the day the petition was moved, *i.e.* on 23.09.2021 an interim order was passed after hearing the learned counsels representing the parties. The operative portion of the order is reproduced here below:

"I have considered the submissions of the learned counsels appearing for the parties.

Let notice be issued to all the respondents making the same returnable within 2 weeks.

Till the next date of hearing status quo as on today, i.e. the keys of the Church buildings including the keys of the apartments, quarters etc of the 3 new independent churches (the applicants) which were already handed over by the Deputy Commissioner as per his circular dated 18/9/2021 shall continue to remain with the applicants until further order of this Court. Needless to say but, the district administration shall take all necessary measures to maintain law and order in and around the Churches with utmost care and impartiality.

The learned counsels appearing for the parties shall also communicate this order to their respective clients for due compliance.

I may also add here that one of the commandments of the Lord is to love one another so that people will know that we are His disciples. This shows that the very essence of Church is love. It is hoped that the parties involved here will act within the bounds of this commandment."

6. Being aggrieved by the interim order given above, the Wokha

Town Baptist Church through its Legal Cell Committee members filed the IA(C)/13/2022 praying for vacation or alteration or cancellation of the same.

7. Mr. C.T. Jamir, learned senior counsel appearing for the review petitioners, *i.e.* the three sector churches submitted that since the sector churches have been having their own worship services and carrying on their activities using their respective Sector Church buildings, and all the facilities under their management have been given recognition by the Lotha Baptist Churches Association, they have every right to continue to worship in the same church buildings and to utilize the existing facilities. Mr. C.T. Jamir also submitted that besides conducting worship services a church conducts so many other activities like Sunday school, prayer meetings, camps, *etc.* And besides, every church also requires living quarters for pastors and other staff. So naturally, the sector churches which have now been recognized as independent churches will continue to use all those facilities. Therefore, in order to avoid any chance of misunderstanding between the parties and by the district administration, the order dated 16.09.2021 passed in WP(C)/69/2021 may be modified, so as to include handing over of the keys of the other facilities besides the church buildings which have been under the occupation and utilization of the respective sector churches. The learned senior counsel further submitted that the Review petition has become necessary as the other parties including the district administration had started asserting that the order dated 16.09.2021 does not cover the other facilities. In support of his submission, the learned senior counsel referred to

paragraphs 8 and 15 of the judgment passed in ***Meera Bhanja (Smt) Versus Nirmala Kumari Choudhury*** reported in **(1995) 1SCC 170** and paragraph 18 of the judgment and order passed in the case of ***Haridas Das Versus Usha Rani Banik (Smt) and Others*** reported in **(2006) 4SCC 78**. The paragraphs are reproduced here below one after the other.

(1995) 1SCC 170

" 8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

"It is true as observed by this Court in *Shivdeo Singh v. State of Punjab*, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter 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 apparent on the face 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. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

15. In our view the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has overstepped its jurisdiction under Order 47, Rule 1 CPC by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position indicated by us earlier. In substance, the Review Bench has re-appreciated the entire evidence, sat almost as court of appeal and has reversed the

findings reached by the earlier Division Bench. Even if the earlier Division Bench's findings regarding C.S. Plot No. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate court. Learned counsel for the respondent was not in a position to point out how the reasoning adopted and conclusion reached by the Review Bench can be supported within the narrow and limited scope of Order 47, Rule 1 CPC. Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It could not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Only on that short ground, therefore, this appeal is required to be allowed. The final decision dated 8-7-1986 of the Division Bench dismissing the appeal from Appellate Decree No. 569 of 1973 insofar as C.S. Plot No. 74 is concerned as well as the review judgment dated 5-9-1984 in connection with the very same plot, i.e., C.S. Plot No. 74, are set aside and the earlier judgment of the High Court dated 3-8- 1978 allowing the second appeal regarding suit Plot No. 74 is restored. The appeal is accordingly allowed. In the facts and circumstances of the case, there will be no order as to costs."

(2006) 4SCC 78

"18. It is also pertinent to mention the observations of this Court in the case of Parsion Devi v. Sumiri Devi. Relying upon the judgments in the cases of Aribam and Smt. Meera Bhanja it was observed as under: (SCC p.719, para 9)

'9. Under Order 47, Rule 1, CPC a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the 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 the record justifying the Court to exercise its power of review under Order XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise.'"

8. Mr. A. Zhimomi, learned counsel for the respondent nos. 1 to 4 in the Review petition and the applicants in the I.A(C)/13/2022 at the very outset submitted that the review petitioners have not made out a case for reviewing the order dated 16.09.2021 passed in WP(C)/69/2021. Therefore, the petition itself is not maintainable. Secondly, the learned counsel submitted that the writ petition was

disposed of based on a false statement made by the respondents (the review petitioners) that they have their own church buildings and other facilities for having their own worship service and carrying out their other activities. While in fact, they have no such church buildings and facilities. The church buildings and the other facilities belong to the Wokha Town Baptist Church and they were allowed to use them when they were members of the same church. But now that they were no longer members of Wokha Town Baptist Church they have no right whatsoever to use the same. Lastly, Mr. A. Zhimomi submitted that if the Review petitioners are aggrieved by the order they should approach the appropriate forum on appeal. In support of his submission the learned counsel referred to paragraphs 22 and 23 of the judgment passed in the case of ***Indian Bank Versus Satyam Fibres (India) Pvt. Ltd.*** reported in ***(1996) 5SCC 550***. The learned counsel also referred to paragraphs 6, 7 and 8 of the judgment passed in the case of ***Budhia Swain and Others Versus Gopinath Deb and Others*** reported in ***(1999) 4SCC 396***. The contents of the paragraphs of the judgments passed in the two cases mentioned above are reproduced here below one after the other.

“(1996) 5SCC 550

Indian Bank

Versus

Satyam Fibres (India) Pvt. Ltd.

22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. This power spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience

to its process and rules, protect its officers from indignity and wrong and to punish unseemly behavior. This power is necessary for the orderly administration of the court's business.

23. *Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to abuse of the process of the court, the courts have been held to have inherent power to set aside and order obtained by fraud practice upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. The court has also the inherent power to set aside a sale brought about by fraud practiced upon the court or to set aside the order recording compromise obtained by fraud.*

(1999) 4SCC 396
Budhia Swain and Others
Versus
Gopinath Deb and Others

6. *What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank Vs. M/s Satyam Fibres India Pvt. Ltd. 1996 (5) SCC 550. Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order (i) obtained by fraud practised upon the Court, (ii) when the Court is misled by a party, or (iii) when the Court itself commits a mistake which prejudices a party. In A.R. Antulay Vs. R.S. Nayak & Anr. AIR 1988 SC 1531 (vide para 130), this Court has noticed motions to set aside judgments being permitted where (i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented, (ii) a judgment was obtained by fraud, (iii) a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.*

7. *In Corpus Juris Secundum (Vol. XIX) under the Chapter "Judgment-Opening and Vacating" (paras.265 to 284 at pages 487-510) the law on the subject has been stated. The grounds on which the courts may open or vacate their judgments are generally matters which render the judgment void or which are specified in statutes authorising such actions. Invalidity of the judgment of such nature as to render it void is a valid ground for vacating it at least if the invalidity is apparent on the face of the record. Fraud or collusion in obtaining a judgment is a sufficient ground for opening or vacating it. A judgment secured in violation of an agreement not to enter judgment may be vacated on that ground. However, in general, a judgment will not be opened or vacated on grounds which could have been pleaded in the original action. A motion to vacate will not be entered when the proper remedy is by some other proceedings, such as by appeal. The right to vacation of a judgment may be lost by waiver or estoppel. Where a party*

injured acquiesces in the rendition of the judgment or submits to it, waiver or estoppel results.

8. *In our opinion a tribunal or a court may recall an order earlier made by it if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the court prejudicing a party or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence."*

9. Perused the record and also considered the submissions of both the learned counsels. It will be seen from the facts and circumstances stated in the preceding paragraphs that both the parties belong to the same church but for convenience sake the sector churches to which the Review petitioners belong to were established. It also appears that the parties were in agreement for the Sector Churches to have their own independent churches but after the Centenary celebration of the Wokha Town Baptist Church. Therefore, the only hitch one can make out is regarding the timing, that is, as to when the sector churches would be released by the mother church to be independent churches. Perhaps had prayer and time were given their due places everything would have ended with a happy note.

Now the scenario has changed because the three petitioners (sector churches) have been recognized as independent churches by the highest body of the Lotha Baptist Churches. Therefore, the only issue that remains between the mother church and the three churches appears to be concerning the properties. Property rights and titles are

issues that have to be dealt with by the Civil Court which has both geographical and pecuniary jurisdiction. In a civil court to decide such matters normally take time because evidence both of oral and documents have to be adduced by the parties. Considering the delicate nature of the relationship between the parties which is bound by none other than the word of God as given in the Bible, and the issues that are likely to arise between them and the consequences that would follow if they are not resolved at the earliest, this Court was of the view that the best way to resolve the same would be through mediation. Therefore, none other than the NBCC was requested to do the job since the Council is the Apex Body of all the Baptist churches in Nagaland and, most respected and revered too. But for certain reasons the mediation could not take off. Yet hoping and praying that some sort of understanding may be brought about through the intervention of churches and social organizations which would serve the best interest of the parties this Court waited for quite some time. Since things have not turned out the way it was expected, the matter had to be heard and disposed.

10. The original writ petition in which the order sought to be reviewed was passed was instituted because the Deputy Commissioner Wokha passed the order dated 12.02.2021 by which the parties were directed to worship only on certain days and at fixed time frames. The ground taken by the writ petitioners was that their right to worship and their right to administer the affairs and functions of their own church (religious institutions) have been violated by the order, that too, without giving them a chance of being heard. However, from the

pleadings of the parties what has emerged is that the main cause of the dispute between the parties is nothing but the question of right and title over the properties. This cannot be dealt with by this Court since the occasion to do so has not come. Such occasion will arise only when the civil court dealing with the same comes to a finding or conclusion. A matter of such nature has to be decided by a civil court since it involved evidence of elaborate nature.

Before the order sought to be reviewed was passed, Mr. C.T. Jamir, learned counsel for the Review petitioners submitted only that the writ petition can be disposed of since the respondents (who are the Review petitioners) have been issued certificate of full-fledged independent church, and since they have their own church buildings they will continue their worship in those buildings, as such, no more problem will arise between the parties. The learned counsel for the writ petitioners, Mr. N.K. Luikham who was also present did not deny or counter the claim of the respondents that the three Sector Churches have been recognized as independent churches. The only concern expressed by him was that, even though the respondents are recognized as independent churches they may still come to the church of the petitioners for worship and if that happens, problems may arise again. However, the fact that there are other properties for which no decision has been taken by the churches was not brought to the notice of this Court.

11. As stated above, in any case, this Court is not the right forum to decide regarding the rights and titles of the parties over the properties at this stage. They must first be decided by the Civil Court

having geographical and pecuniary jurisdiction as already stated. If the prayer of the petitioners in the Review Petition is considered and allowed it would amount to stepping into the shoes of a civil court. It would also amount to doing something indirectly which cannot be done directly. As such, precisely stating, the parties will have to approach a civil court of competence having jurisdiction to decide their dispute over the properties. Accordingly, the Review petition and the I.A. are disposed with a direction that the parties should maintain status quo regarding the properties as on the day the order dated 16.09.2021 was passed in the writ petition till such time any of the parties move a competent civil court. The same should be done within three months from the date of this order. This is to prevent escalation of the tension between the parties and also to avoid any chaotic situation that may arise.

Before I part with this order I may also remind the parties once again that a church is founded on love and without that it will not serve its purpose. Our Lord's commandment as given in the verse 34 and 35 of John Chapter 13 which are reproduced herein below should stand as a reminder to all followers of Christ at all times.

"John 13: 34, 35

³⁴ "A new command I give you: Love one another. As I have loved you, so you must love one another.

³⁵ By this everyone will know that you are my disciples, if you love one another.""

Sd/-
JUDGE

Comparing Assistant