Court No. - 40
Case :- CIVIL MISC REVIEW APPLICATION No. - 365 of 2023
Applicant :- Mallu Yadav And 7 Others
Opposite Party :- Union Of India And 3 Others
Counsel for Applicant :- Ganga Dhar Shukla
Counsel for Opposite Party :- C.S.C.,Pranjal Mehrotra

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Vipin Chandra Dixit,J.

1. Heard learned counsel for the applicants/petitioners, Sri F.A. Ansari & Sri S.C. Upadhyay, learned Standing Counsel and Sri Pranjal Mehrotra, learned counsel appearing on behalf of opposite party no. 2.

2. This application has been filed for reviewing the judgement and order dated 03.02.2023 by which the writ petition bearing Writ - C No. 29261 of 2018 was dismissed with a detailed observations. For ready reference, the order dated 03.02.2023 is reproduced herein under.

"Sri Pranjal Mehrotra learned Advocate has put in appearance on behalf of the respondent no. 2/NHAI.

No one has put in appearance on behalf of the petitioners to press the present bunch of writ petitions. On the last occasion, i.e. on 3.1.2023, the matter has been adjourned on the request of the counsel for the petitioners with the understanding that no further adjournment would be granted.

The challenge in the writ petition is to the order dated 27th January, 2018 passed by the District Magistrate, Gorakhpur rejecting the representations moved by the petitioners holding that the plots in question namely Gata Nos. 170, 171, 172 and 174 situated in village Kalani Khurd, Pargana Bhauapar, Tehsil Sadar, District Gorakhpur have been recorded as road Patri and 'Khanti' (Pit) in the Khasra and as per report of the Sub-Divisional Officer, Sadar dated 19.1.2018, the consolidation records in Akar Patra-41 shows entry of road in the land in question. The road namely Gorakhpur-Varanasi road was constructed about 50 years back and as per the old Khasra record, the land in question has been recorded as road, 'Khanti' and road side Patri and as per the report of the Consolidation Officer, they were kept out of consolidation.

It was further noted that the portion of the plots in question which were in the name of the tenure holders were also utilized for construction of road much earlier and had been kept out of consolidation, thereafter.

For the aforesaid, it was noted that the claim for compensation was highly belated and without any basis.

In the writ petition, the petitioners state that their plot in Gata No. 173 had been acquired for construction of two lane of National Highway-29 which is running from Gorakhpur to Varanasi in accordance with the provisions of the National Highways Act, 1956 and necessary compensation had been given to the tenure holders and there is no dispute about the said plot. However, plot nos. 170, 171, 172 and 174 and its sub-divided plot no. 171 (Kha) and 171 (Gha) remained in the ownership and possession of the petitioners. In the year 2014, the petitioners came to know that two lane of NH-29 was being widened to four lane from Gorakhpur to Varanasi and proposed map had been prepared.

The reliance has been placed on the letter dated 4.12.2014 of respondent no. 2 namely the General Manager/Project Director, NHAI, Gorakhpur which is appended as Annexure '4' to the writ petition to assert that it was admitted that Gata Nos. 170, 171, 172, 173 and 174 were utilized for construction of road. A statement has been made therein that there existed road on the spot as per the revenue map. The contention is that the statement in the letter dated 2.12.2014 is against the statement in the order impugned.

Be that as it may, it is sought to be submitted that the Plot Nos. 171 and 172 were still in possession of the petitioners. In various paragraphs of the writ petition though dispute has been raised with regard to the nature of entries of plots in question but there is no categorical dispute with regard to the entries in consolidation records as indicated in the order impugned.

The plots in question namely Plot Nos. 170, 171, 172 and 174 of the village in question have not been included in the acquisition notification as there were entry of road side Patri and 'Khanti' in the consolidation records. No exception can be taken to the findings returned by the District Magistrate, in absence of any material on record. The challenge to the order passed by the District Magistrate in denying compensation to the petitioner, therefore, cannot be sustained.

The writ petition is, accordingly, dismissed."

3. The scope and ambit of the review under Article 226 of the Constitution of India, in reviewing its own order, is very limited. The review application can be allowed only on (1) discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the person seeking review, or could not be produced by him at the time when the order was made, or (2) when some mistake or error on the face of record is found, or (3) on any analogous ground. But review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court.

4. In the case of ***Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909***, Hon'ble Apex Court took the view that there is nothing under Article 226 of the Constitution of India, which precludes 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. It was held that the power of review under Article 226 of the Constitution of India, in reviewing its own orders, every Court including High Court inheres plenary jurisdiction, to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

5. Hon'ble Apex Court in the case of ***A.P. Sharma v. A.P. Sharma, 1979 (4) SCC 389***, has cautioned that power of review of the High Court is not the same as appellate powers and review on the ground that certain documents have not been considered, which formed the record, cannot be ground of Review. Hon'ble Apex Court in the case of ***Meera Bhanja v. Nirmla K. Chaudhary, 1995 (1) SCC 170***, has taken the view that review must be confined to error apparent on the face of record, error must be such as would be apparent on mere looking without any long drawn process of reasoning, and reappraisal of evidence on record for finding out error would amount to exercise of appellate jurisdiction, which is not at all permissible.

6. In the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137, Hon'ble Supreme Court has made the following observations in connection with an error apparent on the face of the record :-

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ.

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, C.P.C. 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 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, C.P.C. 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 8th July, 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 5th September, 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 3rd August, 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."

7. In ***Parsion Devi and others v. Sumitri Devi and others, 1997 (8) J.T. SC 480***, Hon'ble Supreme Court has taken the view that review proceeding has to be strictly confined to the ambit and scope of Order 47, and therein the two earlier judgments referred to above have been relied upon. Again in ***Smt. Meera Bhanja v. St. Nirmala Kumari Choudhary, 1985 (1) SCC 170***, while quoting this approval a passage from ***Abhiram Taleshwar Sharma v. Abhiram Pishak Sharma & Ors. (1979 (4) SCC 389***, Hon'ble Supreme Court once again held that 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.

8. Hon'ble Apex Court, in the case of ***Lily Thomas v. Union of India, AIR 2000 SC 1650,*** after considering the dictionary meaning of word "review" has taken the view that power of review can be exercised for correction of mistake and not to substitute a view. Such powers can be exercised within the limits of the statute, dealing with exercise of power; the review cannot be treated as an appeal in disguise, and mere possibility of two views on the subject is not a ground of Review.

9. Hon'ble the Apex Court in ***Subhash Vs. State of Maharastra & another, AIR 2002 SC 2537***, the Apex Court emphasized that Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review. In ***State Haryana v. Mohinder Singh, JT 2002 (1) 197***, the Apex Court disapproved the judgment of High Court,wherein earlier writ petition was disposed of by High Court being infructuous and giving some directions, and subsequent to the same, Review was sought, which was allowed, same was clearly termed to be overstepping of jurisdiction, and amounting to giving of one more chance of hearing.

10. In the case of ***Union of India v. B. Valluvar, 2006 (8) SCC 686***, Hon'ble Apex Court has again considered the parameters of review jurisdiction of High Court, that same shall be exercised within the limitations as provided under Section 114 read with Order 47 Rule of C.P.C.,and without recording finding as to there existed error apparent on the face of the record, merit cannot be gone into. Hon'ble Apex Court in the case of ***State of Haryana and others v. M.P. Mohila, 2007 (1) SCC 457***, has taken the view that in the garb of clarification application, recourse to achieve the result of review application, cannot be permitted, as what an not be done directly,cannot be done indirectly.

11. In ***Kamlesh Verma Vs. Mayawati and others 2013 (8) SCC 320***, the Apex Court said:

"19. 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 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the Principles:

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" has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius & Ors., AIR 1954 SC 526, 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 vs. Sandur Manganese & Iron Ores Ltd. & Ors., 2013 (8) SCC 337.

22.2. 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 negatived."

(emphasis supplied)

12. On the touchstone of the dictum noted above, the review is permissible only when there is error apparent on the face of record i. e. error should be grave and palpable, and the error must be such as would be apparent on mere looking of record, without requiring any long drawn process of reasoning, and reappraisal of entire evidence for finding the error, as same would amount to exercise of appellate jurisdiction. Further, the review lies only on the grounds mentioned in Order 47, Rule 1 read with Section 141 CPC. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in the said provision of C.P.C.

13. Perusal of judgment under review passed by us shows that each and every aspect of the matter has been considered and thereafter, the writ petition in question was dismissed and there appears no apparent mistake in the judgment under review. Neither review court can examine the merits of the judgment as an appellate court nor in the garb of review petition, a re-hearing of the matter can be permitted by this Court.

14. Consequently, the review application is ***rejected***.

Order Date :- 13.10.2023/sailesh

Digitally signed by :-
SAILESH PRAJAPATI
High Court of Judicature at Allahabad