

Court No. - 20

**Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE
No. - 165 of 2023**

Applicant :- State Of U.P. Thru. Prin. Secy. Housing And
Urban Development U.P. Civil Secrett. Lko. And 2 Others

Opposite Party :- Dr. Vinay Kumar Jain

Counsel for Applicant :- C.S.C.

Counsel for Opposite Party :- Sudhir Kumar Pandey

Hon'ble Manish Mathur,J.

Order on Condonation of Delay

The application. Although the respondent has filed objections to the application, was shown in the affidavit filed in support of application is sufficient and as such delay in filing review is condoned.

Order on memo

1. Heard learned counsel for review petitioner.
2. Review has been filed challenging judgment and order dated 14.02.2023 passed in Writ-A No. 1000081 of 2015, **Dr Vinay Kumar Jain versus State of U.P and Others**. Learned State Counsel while assailing the aforesaid judgment and order has submitted that there are grave errors apparent on the face of record which could require a review of aforesaid judgment. It has been submitted that it has escaped attention of this Court that the writ petitioner did not have any right, title or ownership over the property in question which in fact is a Nazul property belonging to the State of U.P. due to which the writ petitioner did not have any right to seek release under Section 16 of U.P. Act No. 13 of 1972. It is also submitted that the writ petitioner had filed aforesaid release application on the basis of alleged will said to have been executed by one Mr. Nand Lal who was alive as on the date of filing application for free hold of the property, and who had also filed his no objection certificate in favour of petitioner. It is also submitted that the property in question was leased out for residential purposes only in favour of one Rai Rajeshwar Bali for the period of 30 years which was to be renewed for 30 years at a stretch subject to maximum of the period lease of 90 years. It is also submitted that the son of Rai Rajeshwar Bali, Dinanath Bali executed a sale deed in

favour of one Smt. Kapura Devi in 1955 from whom it was succeeded to by Nand Lal through whom petitioner is claiming. As such it is submitted that this Court has not considered the aforesaid aspects particularly with regard to in executability of sale deed in favour of Smt. Kapura Devi and therefore the basis through which petitioner was claiming became non-existent. It is also submitted that even the oral gift allegedly made by Mr. Nand Lal Jain in favour of writ petitioner was not admissible as evidence and was void ab initio because aforesaid person himself did not any right of title over the property in question. It is also submitted that the judgment itself states that once findings have been recorded, the case should have been remitted to the prescribed authority and therefore this Court fell in error and not remanding the dispute to the prescribed authority for determination of bona fide need of petitioner. It is submitted that had the case being remitted to the prescribed authority, the review petitioner being State Government would have had an opportunity to defend its stand by adducing relevant evidence. Learned counsel has also adverted to the fact that subsequent to passing of the impugned judgment, regular Suit No. 431 of 2023 **State of U.P. versus Dr. Vinay Kumar** has been filed challenging the free hold deed dated 22.07.2000.

3. The aspect and scope of review has already been delineated by the Hon'ble Supreme Court in the case of **Kamlesh Verma versus Mayawati reported in (2013) 8 SCC 320** which is as follows:-

*"69. In Kamlesh Verma, this Court in para 20, laid down its conclusions, which reads as follows: (SCC pp. 333-34) "Summary of the principles
"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" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholios v. 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 & Tron 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.*
- (ii) 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."*

4. Upon consideration of aforesaid judgments, it is evident that the scope of review petition is very limited and cannot be enlarged to a re-hearing on matters which have already been decided on the merits unless and until there is an error indicated which is apparent on the face of record.

5. Upon consideration of submissions advanced by learned counsel for review petitioner, it is quite evident that the aforesaid aspects have already been decided in the following manner in impugned judgment:-

"Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it transpires that even if the factum of initial sale deed executed in favour of Smt. Kapura Devi and general succession of petitioner is ignored, the admitted situation which emerges is that State Government, acting through the District Magistrate had executed a free hold deed on 22.07.2000 in favour of petitioner. The aforesaid fact is clearly admitted by the opposite parties in their second counter affidavit filed on 28.11.2019 although it is stated that the said free hold deed is against the law. It is an admitted situation that the free hold deed executed in favour of the petitioner in the year 2000 has never been challenged by the State Government in any civil court of competent jurisdiction. It is also not the case of the opposite parties that the aforesaid free hold deed has ever been varied, modified or rescinded by mutual consent of parties and as such it is evident that it is admitted by the

opposite parties that petitioner had derived title and ownership of the property in question by virtue of the aforesaid deed.

It is also a fact worth recording that for applicability of the U.P. Act No.13 of 1972, concept of owner of property is quite different from the concept of landlord as envisaged under Section 3 (j) of the Act. However, rights of an owner of a property vis-a-vis his rights as landlord of the property would be quite evident from provisions of Section 109 of the Transfer of Property Act, by virtue of which an owner would definitely acquire rights of landlord to come within its definition as per the Act of 1972.

From reading of written statement, counter affidavits filed in the petition as well as impugned orders, there does not appear to be any document produced by the State Government by virtue of which it can be held that the State Government is owner of premises in question. The right of eminent domain has also not been taken by the State Government. Another aspect requiring mention is that although the initial sale deed executed in favour of Smt. Kapura Devi has been submitted to be against initial lease executed by the then government in favour of Mr. Raj Rajeshwar Bali, it is admitted case of opposite parties that no challenge to aforesaid sale deed was ever made by the State Government. Even otherwise the aforesaid aspect would be irrelevant once free hold deed was executed by the State Government itself in favour of petitioner in the year 2000.

As such finding recorded by the authorities in impugned order to the effect that State Government is the owner of property in question does not bear out from the record."

6. It is thus clear that the order under challenge has been passed primarily on the basis of execution of free hold deed dated 22.07.2000 in favour of petitioner by the State Government acting through the District Magistrate. The judgment also indicates the stand of review petitioner that as on the date of passing of impugned judgment, the aforesaid free hold deed has never been varried, modified or rescinded by mutual consent of parties.

7. It is in fact admitted that subsequent to passing of the impugned judgment, State Government has filed a regular suit for cancellation of the aforesaid deed, which is still pending consideration. This Court in his judgment has clearly ignored the aspects of general succession which has been submitted by learned counsel for review petitioner that petitioner did not derive any benefit from the aforesaid succession.

8. It is also quite evident from the judgment under challenge a right of the State Government either as per eminent domain or even as a tenant or authorized occupant has also been dealt with, which form basis of finding that there was no requirement to remit the case for consideration of afresh to the prescribed authority.

9. Apart from the aforesaid submissions, the other submissions

also pertain only to the aspect of incorrect execution of the free hold deed dated 22.07.2000. Since the aforesaid deed was clearly existing as on the date of passing of impugned judgment and has only been challenged subsequently, in the considered opinion of this Court, such a subsequent event cannot form the basis of reviewing a judgment passed on the facts of the case as then existing.

10. In view of the aforesaid, the review petitioner has not been able to demonstrate any error apparent on the face of record.

11. The review petition as such being devoid of merit is **dismissed**.

Order Date :- 13.10.2023

Satish