

GAHC040004492024



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

Review.Pet./06(AP)/2024

Union of India and 2 Ors.

...Applicants

-Versus-

The State of Arunachal Pradesh and 66 Ors.

... Opposite parties / writ petitioners

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the applicants : Shri M. Kato, CGC

Advocate for the opposite parties : Shri S.R. Rabha

Date of hearing : **20.06.2024**

Date of Judgment : **20.06.2024**

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JUDGMENT & ORDER

Heard Shri M. Kato, learned CGC, Arunachal Pradesh, who has appeared online for the review applicants. Also heard Shri S.R. Rabha, learned counsel for the opposite parties / writ petitioners.

2. By the present application, review has been sought for *qua* the judgment and order dated 30.01.2024 of this Court in WP(C)/18/2023. By the aforesaid judgment, this Court had allowed the writ petition by directing payment of the compensation assessed for the standing crops and properties and ROW as per the communication dated 13.10.2017.

3. Shri Kato, learned CGC has submitted that the claim was in respect of construction of the Hunli-Metengliang-Hayuliang Defence Road for the portion of KM 143 to KM 158 in the Anjaw district in the State of Arunachal Pradesh. The learned counsel has referred to a communication dated 27.03.2023 which has been annexed to the review application as Annexure 5 and has contended that the construction of the stretch between KM 143 to KM 165 was to be foreclosed. The learned CGC has referred to the connected pleadings in paragraphs 8 and 9 of the review application in this regard.

4. It is submitted that the aforesaid communication was discovered only at the time of implementation of the judgment and therefore, the application has been filed for review.

5. The learned CGC has submitted that when the portion of the concerned

Highway was foreclosed and not utilized, the applicants cannot be burdened with payment of compensation.

6. *Per contra*, Shri Rabha, learned counsel for the opposite parties / writ petitioners has submitted that the entire projection in the review application is misconceived. It is submitted that the amount in question was only for the *zirat* and not for acquisition of the land. It is submitted that the assessment was done in the year 2017 and thereafter the valuation was done by the Administration with full knowledge of the Requiring Department. The writ petition was instituted for non-payment of the estimated amount for the *zirat*. It is submitted that the communication dated 27.03.2023 was very much existing at the time of adjudication of the writ petition and therefore such communication cannot be the ground of filing of review. He otherwise submits that the contents of the communication is not relevant for the purpose of adjudication of this case as the same has nothing to do with the compensation for the *zirat*.

7. In support of his submissions, Shri Rabha, learned counsel for the opposite parties / writ petitioners has relied upon the decision of the Hon'ble Supreme Court in the case of ***Ram Sahu (Dead) through LRs Vs. Vinod Kumar Rawat & Ors.*** reported in ***AIR Online 2020 SC 813***. It is submitted that the power of review would be available only to correct an error apparent on the face of the records for which no elaborate argument is required and a review cannot be an appeal in disguise. The learned counsel has also referred to the case of ***Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma*** reported in ***(1979) 4 SCC 389*** wherein it has been laid down that while a High Court

exercising powers under Article 226 of the Constitution of India cannot be held to be precluded from the plenary jurisdiction including exercising powers of review, such powers are to be exercised only on exceptional circumstances and not on ground that the decision was erroneous on merits.

8. The rival submissions have been duly considered.

9. The judgment dated 30.01.2024 which is the subject matter of review is admittedly on the aspect of *zirat* compensation and not for acquisition compensation of the land. In fact, in paragraph 14 of the said judgment, the aforesaid aspect was expressly mentioned.

10. For ready reference, paragraph 14 of the said judgment is extracted hereinbelow-

“14. The only objection which is seen from the affidavit of the requiring authority is that there was a communication dated 28.05.2015, regarding final compensation and no further claims was to be entertained. This Court has however, noticed that admittedly the amount of Rs.132.30 Lacs was the final compensation for the land and was not pertaining to the Zirat, crops and ROW. Therefore, the present claim is not in connection with the land in question but for the Zirat which has been specified. This Court is also unable to accept the stand taken in the said paragraph-11 that after 6 years the revised estimate cannot be accepted. The acceptance of same cannot be reckoned from the date of filing of the writ petition

or the affidavit but from the date on which the assessment was notified and communicated to the requiring authority which was done on 13.10.2017 itself. Therefore, the delay, if any is on the part of the requiring authority for which the petitioners cannot be found fault with."

11. The ground for review is based upon a communication dated 27.03.2023. Apart from the fact that the said communication was initiated by the Office of the present applicants, who are the respondents, the same was an existing communication and on their own admission, the applicants are intrinsically connected with the subject matter involved with the writ petition. Therefore, the said letter cannot be held to be a discovery of a document which even after exercise of due diligence was not within the knowledge of the applicants.

12. That apart, the relevant pleadings in the review application are found in paragraphs 8 and 9 which are connected to the aforesaid communication dated 27.03.2023. While as per the communication, the construction of the stretch from KM 143 to KM 165 was to be foreclosed, the pleadings are totally different as per which out of the total length of 15 KM from KM 143 to KM 158, only construction were done of a stretch of 9.205 KM from KM 143.795 to KM 158 and the remaining portion which was foreclosed is of 5.795 KM started from KM 143 to KM 148.795.

13. There is apparently an inconsistency with the stand taken by the applicants vis-à-vis the communication relied upon and the pleadings. Be that as it may, as noted above, the controversy is not with regard to the acquisition

compensation but of *zirat* compensation. This Court has already recorded in the judgment in respect of which this application has been filed that the assessment was made in the year 2017 when the preparations were made for construction causing damage to the standing crops and properties and accordingly the *zirat* valuation was made. The said valuation cannot be connected to the decision taken in the year 2023 as would appear from the communication relied upon which relates only to foreclosure of a particular stretch of the Highway concerned.

14. The principles governing review are well settled. In a recent decision dated 18.08.2022 reported in **(2022) SCC OnLine 1034, (S Madhusudhan Reddy Vs. V Narayana Reddy & Ors.)** a three Judges' Bench of the Hon'ble Supreme Court, after discussing the relevant case laws has reiterated the principles laid down in the case of **Kamlesh Verma** (*supra*) which are as follows:

“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 negative.”

15. The facts and circumstances of the present case do not fall within the grounds for which a review may be entertained and rather fall within the grounds where such application for review is not to be entertained.

16. This Court has also noted that Chapter 10 of the Gauhati High Court Rules, which is on the aspect of filing an application for review prescribe for framing concise grounds of review. In the instant application, no such grounds have been framed. However, even without going to the technical aspect of the matter, this Court is of the considered opinion that the grounds which have been orally canvassed in respect of the review application by taking support of the communication dated 27.03.2023 read with the relevant pleadings in paragraphs 8 and 9 of the review application are not at all relevant and therefore cannot be grounds for invoking the powers of review by this Court *qua* the judgment and order dated 30.01.2024 passed in WP(C)/18/2023.

17. The review application is accordingly dismissed.

JUDGE

Comparing Assistant