

GAHC010081202024



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

Case No. : Review.Pet./64/2024

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPTT., DISPUR, GUWAHATI- 6.

2: DIRECTOR OF LAND RECORDS AND SURVEYS
ASSAM RUPANAGAR GUWAHATI- 32.

3: THE DISTRICT COMMISSIONER
DIST.- DIBRUGARH ASSAM PIN- 786003.

4: THE CIRCLE OFFICE
DIBRUGARH REVENUE CIRCLE
DIST.- DIBRUGARH ASSAM PIN- 786003

VERSUS

NAVIN KUMAR GOENKA AND 3 ORS.
S/O- LATE BAJRANGLAL AGARWALLA (GOENKA), R/O- GOENKA MARKET,
R.K.B. PATH, P.S. AND DIST- DIBRUGARH, ASSAM, PIN- 786001.
REP. BY CONSTITUTED ATTORNEY, SRI ABHISHEK SINGH, AGED 35
YEARS, S/O- SRI ASHOK SINGH (POWER OF ATTORNEY NO. 719 DATED
20.11.2012), R/O- VILL- NO. 3 BAMHUKUTA, P.O. AND P.S. DULIAJAN, DIST-
DIBRUGARH, ASSAM, PIN- 786602. PARTNER, M/S AMAR CONSTRUCTION
COMPANY, HAVING ITS OFFICE AT 101, PRAFULLA RESIDENCY,
CHOWKIDHINGEE, DIBRUGARH, ASSAM, PIN- 786003.

2: RANJEETA KESHAN
W/O- SRI PRADIP KR. KESHAN
R/O- SANTIPARA
P.O. AND DIST- DIBRUGARH
ASSAM PIN- 786001.
REP. BY CONSTITUTED ATTORNEY
SRI ABHISHEK SINGH
AGED 35 YEARS

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R/O- VILL- NO. 3 BAMHUKUTA
P.O. AND P.S. DULIAJAN
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ASSAM
PIN- 786602. PARTNER
M/S AMAR CONSTRUCTION COMPANY
HAVING ITS OFFICE AT 101
PRAFULLA RESIDENCY
CHOWKIDHINGEE
DIBRUGARH
ASSAM PIN- 786003.

3:SANDEEP KEDIA
R/O- NALIAPOOL
P.O. AND DIST- DIBRUGARH
ASSAM PIN- 786001.

REP. BY CONSTITUTED ATTORNEY
SRI ABHISHEK SINGH
AGED 35 YEARS

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HAVING ITS OFFICE AT 101
PRAFULLA RESIDENCY
CHOWKIDHINGEE
DIBRUGARH
ASSAM PIN- 786003.

4:M/S BANWARI LAL SANDEEP KUMAR
H.U.F.

REP. BY BANWARILAL KEDIA
KARTA R/O- NALIAPOOL
P.O. AND DIST- DIBRUGARH
ASSAM

PIN- 786001. REP. BY CONSTITUTED ATTORNEY
SRI ABHISHEK SINGH
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R/O- VILL- NO. 3 BAMHUKUTA
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DIST- DIBRUGARH ASSAM
PIN- 786602. PARTNER
M/S AMAR CONSTRUCTION COMPANY
HAVING ITS OFFICE AT 101

PRAFULLA RESIDENCY
CHOWKIDHINGEE
DIBRUGARH
ASSAM PIN- 786003

Advocate for the Petitioner : MR. R BORPUJARI, SC, REVENUE AND DISASTER
MANAGEMENT DEPT

Advocate for the Respondent : MR R CHAKRAVORTY (R-1,2,3,4), S RABHA(R-1,2,3,4)

Linked Case : WP(C)/2789/2019

NAVIN KUMAR GOENKA AND 3 ORS.
S/O- LT BAJRANGLAL AGARWALLA (GOENKA)
R/O- GOENKA MARKET
R.K.B. PATH
P.S. AND DIST- DIBRUGARH
REP. BY THEIR CONSTITUTED ATTORNEY
SRI ABHISHEK SINGH
S/O- SRI ASHOK SINGH (DEED NO. 719 DATED 20.11.2012)
R/O- VILL- NO. 3 BAMHUKUTA
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W/O- SRI PRADIP KR. KESHAN
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CHOWKIDHINGEE DIBRUGARH ASSAM

3: SANDEEP KEDIA
R/O- NALIAPOL

P.O. AND DIST- DIBRUGARH
REP. BY THEIR CONSTITUTED ATTORNEY
SRI ABHISHEK SINGH
S/O- SRI ASHOK SINGH (DEED NO. 719 DATED 20.11.2012)
R/O- VILL- NO. 3 BAMHUKUTA
P.O. AND P.S. DULIAJAN
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PARTNER
M/S AMAR CONSTRUCTION COMPANY
HAVING ITS OFFICE AT 101 PRAFULLA RESIDENCY
CHOWKIDHINGEE
DIBRUGARH ASSAM

4: M/S BANAWARI LAL SANDEEP KUMAR
H.U.F. REP. BY SRI BANWARILAL KEDIA
KARTA R/O- NALIAPOOL
P.O. AND DIST- DIBRUGARH
REP. BY THEIR CONSTITUTED ATTORNEY
SRI ABHISHEK SINGH
S/O- SRI ASHOK SINGH (DEED NO. 719 DATED 20.11.2012)
R/O- VILL- NO. 3 BAMHUKUTA
P.O. AND P.S. DULIAJAN
DIST- DIBRUGARH ASSAM PARTNER
M/S AMAR CONSTRUCTION COMPANY
HAVING ITS OFFICE AT 101 PRAFULLA RESIDENCY
CHOWKIDHINGEE DIBRUGARH ASSAM VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY.
DEPTT. OF REVENUE AND DISASTER MANAGEMENT
DISPUR GHY-6

2:DIRECTOR OF LAND RECORDS AND SURVEYS
ASSAM ROOPNAGAR GHY-32

3:DY. COMMISSIONERDIBRUGARH

4:CIRCLE OFFICER
DIBRUGARH REVENUE CIRCLE DIBRUGARH

Advocate for : MR R CHAKRAVORTY
Advocate for : MRS. D DAS BARMAN (GA
ASSAM) appearing for THE STATE OF ASSAM AND 3 ORS.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 04.12.2024

Heard Mr. R. Borpujari, learned counsel for the review petitioners and Mr. R. Chakravorty, learned counsel for the writ petitioners/respondents.

2. WP(C) 2789/2019 had been filed seeking a direction to be issued to the review petitioners to give the necessary sale/alienation permission, for sale of apartments, as the sale transactions for the sale of apartments could not be completed, due to the inaction of the review petitioners in not granting the required sale/alienation permission.

3. This Court, vide order dated 04.08.2021 passed in WP(C) 2789/2019, directed the Deputy Commissioner/District Commissioner, Dibrugarh to take steps as per the Government Circular No. RSS.573/94/25 dated 26.03.2001 and after obtaining the necessary approval from the Government, the sale permission applied by the petitioners should be taken for consideration as per the relevant law/rules, holding the fields.

4. The review petitioners have filed this present review petition on 25.04.2024, i.e., nearly after 2 years and 8 months of the impugned order dated 04.08.2021.

5. The counsel for the review petitioners submits that the order dated 04.08.2021 passed in WP(C) 2789/2019 needs to be reviewed, as the said impugned order is not implementable, in terms of Section 4(2) of the Assam

Fixation of Ceiling on Land Holdings Act, 1956 (hereinafter referred to as the Act), besides the other provisions of the above said Act. He submits that the land of the writ petitioners is tea plantation land and as such, the sale/alienation permission cannot be given to the said land in terms of the Act.

6. Mr. R. Borpujari, learned counsel for the review petitioners further submits that a series of notifications and office memorandums have been issued by the Government of Assam, barring the grant of sale permission of land, which is a part of a tea plantation, which is covered by a tea periodic patta. He submits that those notifications and office memorandums are a part of the review petition as Annexure-D series (page 162 to 185).

7. The review petitioners' counsel submits that the above office memorandum and the notification could not be produced by the review petitioners at the time of disposal of WP(C) 2789/2019, due to inadvertence. He accordingly submits that the direction passed by this Court in the impugned order is an error apparent on the face of the records.

8. Mr. R. Chakravarty, learned counsel for the writ petitioners, on the other hand, submits that there is no error apparent on the face of the record and the review petitioners are only attempting to rehear the matter. He also submits that the stand of the review petitioners that no sale permission/alienation permission can be given to tea plantation land is incorrect, inasmuch as, the Government Circular No. RSS.573/94/25 dated 26.03.2021, which was to be applied by the Deputy Commissioner/District Commissioner, for disposing of the case of the writ petitioners, allows for grant of sale permission and alienation of tea garden land for any other use. He also submits that various notifications, which are at

page 122 to 128 of the review petition, are examples of sale/alienation permission given by the respondent authorities and notifications, which allows for grant of sale/alienation permission of tea garden land. He accordingly submits that as there being no error apparent on the face of the record, the review petition should be dismissed.

9. I have heard the learned counsels for the parties.

10. The arguments advanced by both the parties goes to show that the entire matter would have to be re-heard and decided afresh, if all the submissions made by the parties and the documents that they are relying upon, are again taken into consideration.

11. In the case of ***State of West Bengal vs. Kamal Sengupta, (2008) 8 SCC 612***, the Supreme Court has held that a review cannot partake the character of an appeal.

12. The stand of the review petitioners that the provisions of the Act do not provide for the grant of sale permission or permission to alienate tea garden land, for any other use, requires this Court to go into the provisions of the Act at length and that exercise, in the view of this Court would not come within the meaning of review, as provided in the CPC and the laws settled by the Supreme Court.

13. In the case of ***Sanjay Kumar Agarwal vs. State Tax Officer (2024) 2 SCC 362***, the Supreme Court has given the gist of various Supreme Court's decision with regard to the power of review, to enable Courts to examine

whether a case of review has been made out.

14. In para 16 of the above judgment, the Supreme Court has held as follows:-

*“**16.** The gist of the afore-stated decisions is that:*

***16.1.** A judgment is open to review inter-alia if there is a mistake or an error apparent on the face of the record.*

***16.2.** A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.*

***16.3.** 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 record justifying the court to exercise its power of review.*

***16.4.** In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."*

***16.5.** A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."*

***16.6.** Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.*

***16.7.** An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*

***16.8.** Even the change in law or subsequent decision/judgment of a co-*

ordinate or larger Bench by itself cannot be regarded as a ground for review?”

15. Keeping in view the settled position with regard to whether a case of review has been made out by the review petitioners, this Court finds that there is no error apparent on the face of the record, which is self evident. The question whether the impugned order is implementable is an issue which has to be examined by looking into various notifications, OMs and the various provisions of the Act and as such, this Court is of the view that the present review would require a re-hearing of the entire case and a process of reasoning, in respect of an issue already decided by the impugned order. This Court is accordingly of the view that no case of review has been made out.

16. In view of the reasons stated above, the review petition stands dismissed.

JUDGE

Comparing Assistant