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

Case No. : Review.Pet./182/2022

BIKI SAHU
S/O SHUKHLAL SAHU, R/O NO. 2, DOLABARI, MOUZA- BHAIKABPAD,
KALIBHOMORA, P.S.-TEZPUR, DIST- SONITPUR, ASSAM.

VERSUS

JAYNAL ABEDIN AND 6 ORS.
S/O LATE ABDUL AZIZ, R/O NO. 2, DOLABARI, MOUZA- BHAIKABPAD,
KALIBHOMORA, P.S.-TEZPUR, DIST- SONITPUR, ASSAM.

2:SAFIKUL ISLAM
S/O JAYNAL ABDIN
R/O NO. 2
DOLABARI
MOUZA- BHAIKABPAD
KALIBHOMORA
P.S.-TEZPUR
DIST- SONITPUR
ASSAM

3:SIRAJUL ISLAM
S/O JAYNAL ABDIN
R/O NO. 2
DOLABARI
MOUZA- BHAIKABPAD
KALIBHOMORA
P.S.-TEZPUR
DIST- SONITPUR
ASSAM

4:SAIDUL ISLAM
S/O JAYNAL ABDIN

R/O NO. 2
DOLABARI
MOUZA- BHAIRABPAD
KALIBHOMORA
P.S.-TEZPUR
DIST- SONITPUR
ASSAM

5:HAKIMUL ISLAM
S/O JAYNAL ABDIN
R/O NO. 2
DOLABARI
MOUZA- BHAIRABPAD
KALIBHOMORA
P.S.-TEZPUR
DIST- SONITPUR
ASSAM

6:RAKIBUL ISLAM
S/O JAYNAL ABDIN
R/O NO. 2
DOLABARI
MOUZA- BHAIRABPAD
KALIBHOMORA
P.S.-TEZPUR
DIST- SONITPUR
ASSAM

7:RIAJUL ISLAM
S/O JAYNAL ABDIN
R/O NO. 2
DOLABARI
MOUZA- BHAIRABPAD
KALIBHOMORA
P.S.-TEZPUR
DIST- SONITPUR
ASSA

Advocate for the Petitioner : MR. A DUTTA, MR. A DHANUKA,MR. A GANGULY

Advocate for the Respondent :

Linked Case : Review.Pet./8/2023

JAYNAL ABEDIN AND 6 ORS.
S/O LATE ABDUL AZIZ
RESIDENT OF NO. 2
DOLABARI

MOUZA BHAIRABPAD
KALIBHOMORA
PS TEZPUR
DIST SONITPUR
ASSAM

2: SAFIKAUL ISLAM
S/O JAYNAL ABEDIN
RESIDENT OF NO. 2
DOLABARI
MOUZA BHAIRABPAD
KALIBHOMORA
PS TEZPUR
DIST SONITPUR
ASSAM

3: SAIDUL ISLAM
S/O JAYNAL ABEDIN
RESIDENT OF NO. 2
DOLABARI
MOUZA BHAIRABPAD
KALIBHOMORA
PS TEZPUR
DIST SONITPUR
ASSAM

4: HAKIMUL ISLAM
S/O JAYNAL ABEDIN
RESIDENT OF NO. 2
DOLABARI
MOUZA BHAIRABPAD
KALIBHOMORA
PS TEZPUR
DIST SONITPUR
ASSAM

5: RAKIBUL ISLAM
S/O JAYNAL ABEDIN
RESIDENT OF NO. 2
DOLABARI
MOUZA BHAIRABPAD
KALIBHOMORA
PS TEZPUR
DIST SONITPUR
ASSAM

6: RAIJUL ISLAM
S/O JAYNAL ABEDIN

RESIDENT OF NO. 2
DOLABARI
MOUZA BHAIRABPAD
KALIBHOMORA
PS TEZPUR
DIST SONITPUR
ASSAM
VERSUS

BIKI SAHU
S/O SHUKHIAL SAHU
RESIDENT OF NO. 2
DOLABARI
MOUZA BHAIRABPAD
KALIBHOMORA
PS TEZPUR
DIST SONITPUR
ASSAM

Advocate for : MR GAURAV R DUTTA
Advocate for : appearing for BIKI SAHU

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGMENT AND ORDER (CAV)

Date : 09-12-2024

Heard Mr. A. Ganguli, learned counsel for the petitioner in Review Pet. No . 182 of 2022 and respondent in Review Pet No. 8 of 2023 . Also heard Mr. S. Biswas, learned counsel for the respondents in Review Pet. No . 182 of 2022 and petitioners in Review Pet No. 8 of 2023.

2. The instant review petitions, Review Pet. No. 182 of 2022 and Review Pet No. 8 of 2023, filed under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is for the modification or review of the judgment and order passed by this Court dated 26.10.2022 passed in Civil Revision Petition No. 7/2022, whereby the Civil Revision Petition filed by the present respondents was allowed by setting

aside the order dated 05.01.2022 passed by the Special Judge, Sonitpur, Tezpur, in Petition No. 1108/2021 in LG. Case No. 10/2019. Since both the review petitioners are analogous to each, they are heard and disposed of together.

3. The background of the case in a nutshell, which led to filing of the Review petition No 182 of 2022, is that review petitioner had purchased land measuring 3 bighas out of 4 bighas from the respondent no. 1, who is also the father of present respondents no. 2 to 7 through a registered sale deed no. 1947/2018 executed between the present respondent No. 1 and the review petitioner. However, the present respondent Nos. 2 to 7, filed a Title Suit 29/2019 before the Civil Judge, Sonitpur, wherein, the present respondent no.1/Mr. Jaynal Abedin was arrayed as defendant no. 1 and the review petitioner as defendant no. 2. The case of the present respondent Nos. 2 to 7 was that they had entered into an agreement on 16.12.2017 with their father respondent no.1/Mr. Jaynal Abedin, and had purchased the suit land for a consideration of Rs. 5 lakhs out of which they had paid the sum of Rs. 4,80,000/- in advance. The Title Suit No. 29/2019 was filed for cancellation of the registered Sale Deed No. 1947/2018. The review petitioner filed his written statement in the TS No. 29/2019, but the present respondent No. 1 being the father of respondent Nos. 2 to 7, had failed to appear in the TS No. 29/2019, wherein the Title Suit then proceeded ex-parte by an Order dated 09.04.2021. The review petitioner had then filed the LG Case No. 10/2019 before the learned Special Court claiming that the respondents by removing the pillar placed on the suit land, had blocked the passage/route leading to the land purchased by the review petitioner and as such, the review petitioner was unable to visit his land and had to take another route which goes through the land of others. According to the review petitioner, the object of respondents by preventing him from entering into his land was to

grab the land purchased by him which amounts to the act of land grabbing. None of the respondents appeared before the Court in LG Case No. 10/2019 on the fixed date and the learned Special Court, vide its Order dated 30.03.2021, had proceeded ex-parte against the present respondents. On 07.10.2021, the respondents filed a petition bearing No. 1108/2021 without mentioning any provision of law, praying for the suspension of the proceeding in LG Case No. 10/2019 due to the pendency of the TS No. 29/2019 wherein, vide its Order dated 05.01.2022, the learned Special Court rejected the petition No. 1108/2021, filed by the respondents and called for the record of TS No. 29/2019, pending in the Court of Civil Judge, Sonitpur, Tezpur.

Aggrieved by the Order dated 05.01.2022, the present respondents filed the Civil Revision Petition No. 7/2022 before this Court, wherein this Court vide its Judgment & Order dated 26.10.2022, on finding that there was already a Civil Suit pending between the parties in connection with the same land, held that the same cannot be termed as land grabbing case with criminal intent under the Assam Grabbing (Prohibition) Act, 2010 and had set aside the Order dated 05.01.2022 passed by the learned Tribunal in LG Case No. 10/2019 and allowed the Revision Petition. Aggrieved, the respondent in the Civil Revision Petition filed the Review Petition No. 182 of 2022.

4. Mr. A. Ganguli, learned counsel by filing the Review Petition No. 182 of 2022, submitted that the Judgment & Order dated 26.10.2022 has to be reviewed and modified by submitting that this Court while deciding the Revision Petition No. 7/2022, had wrongly placed its reliance on the judgment of a Coordinate bench of this Court in *Anarul Shaikh alias Anar Hussain Vs. Sabir Ali* in Case No. CRP No. 74/2018 dated 27.01.2020, which was rendered after a full

trial, in which the evidence and pleadings were adduced by both the parties and after the due consideration of the evidence adduced, the learned Tribunal found that there was a case of Land grabbing which, the Coordinate bench of this Court had set aside on finding that from the evidence so adduced, there is absence of the element of criminal intention on the part of the alleged land grabber. The learned counsel submitted that this Court had failed to consider that in the present LG Case No. 10/2019 case, evidence are yet to be recorded and the learned Special Judge is yet to decide whether there is a criminal intention or not. Thus, this court has wrongly relied on a case which is not applicable.

5. The learned counsel further submitted that the impugned judgment had been rendered Per in curiam inasmuch as, it was contrary to the direct decision of the Apex Court in several cases including ***State of AP Vs. Prameela Modi***, reported in **(2006) 13 SCC 147**, ***Konda Lakshmana Bapuji Vs. Govt. of A.P. & Ors.***, reported in **(2002) 3 SCC 258**, ***Mahalaxmi Motors Ltd. Vs. Mandal Revenue Officer & Ors.***, reported in **(2007) 11 SCC 714**, ***Mandal Revenue Officer Vs. Goundla Venkaiah & Anr.***, reported in **(2010) 2 SCC 461** and the Division Bench of this Court in ***XXX Vs. State of Assam***, reported in **2017 5 GLT 854**. The learned counsel submitted that the judgment in the case of ***Goundla Venkaiah & Anr. (Supra)*** was relied upon by the respondents at the time of hearing of CRP No. 7/2022, but the same did not find mention in the impugned Judgment & Order dated 26.10.2022. That the Apex Court in the above case and in the other above cited cases had held that mere engagement of land grabbing is sufficient to invoke the jurisdiction of the Special Court and the Civil Courts jurisdiction shall stand ousted in all the matters which is within the jurisdiction of the Special Court. That the Apex Court

had held that, when the occupant of the land is alleged to be a 'land grabber', he has to justify his position and prove his source of title. Where the source of title is produced by an occupant, the Tribunal is required to consider whether on the basis of the evidence of title produced by him he can be held to be falling within the definition of 'land grabber' as per section 2 (d) of the Andhra Pradesh (Prohibition) of Land Grabbing Act 1982 '*(Section 2(d) of the Assam Land Grabbing (Prohibition) Act 2010.)*'. It is the duty of the alleged 'land grabber' to prove his lawful entitlement and not a mere prima facie bonafide claim to the land alleged to have been grabbed.

The learned counsel for the review petitioner thus submitted that the impugned judgment passed per in curium whereby contrary to a binding precedent, or the statutory provisions relevant to the issue is always subject to review by the Court in the exercise of its powers under Order 47 rule 1 read with Section 114 CPC as a judgment is one having no value, whether the nature of a precedent or otherwise and hence the aggrieved party can always approach the Court under the said provision. The learned counsel also submitted that the judgment referred to and relied upon by the respondents in the case of ***N. Srinivasa Rao Vs. Special Court***, reported in ***(2006) 4 SCC 214***, has been overruled in the case of ***V. Laxminarasamma Vs. A. Yadaiah & Ors.***, reported in ***(2009) 12 SCC 544*** and as such, no precedential value is attached to the same.

The learned counsel further submitted that the Division Bench of this Court in ***XXX Vs. State of Assam (supra)*** had specifically held that the Special Tribunal decides the question of civil liability only upon a plea of a better claim of title raised by the accused land grabber and such adjudication of civil

liability is not axiomatic but to ensure that the accused is not subjected to wrongful criminal prosecution. The burden is upon the accused to raise the plea of better civil claim upon the suit land. In the instant case, the accused has raised no plea of any title at all and their only defence before the Special Tribunal is the pendency of TS No. 29/2019, hence, the Tribunal was justified in the proceeding with LG Case No. 10/2019.

The learned counsel for the petitioner has also cited the case of **Abdur Rahim (MD) & ORS vs. Abdul Odud(MD) & Anr**, reported in **2018(4) GLT 1155**, wherein in a similar case, a Coordinate bench of this court held that as the civil and criminal liability has not been decided by the learned Special Tribunal on the basis of the materials available on record, no case is made for quashing of the impugned order thereby taking cognizance of the land grabbing case, cannot be evaluated on merits at this stage and that any interference with a land grabbing case at it's initial stage shall convert an urgent proceeding into a long drawn proceeding which would defeat the very purpose of the Act. Further, the Special Tribunal cannot stay the proceedings of any suit lawfully filed before a competent court.

6. The learned counsel further submitted that there was a misconception of facts in the instant case, wherein the suit land was in the physical possession of the present petitioner since the date of a purchase deed and the present respondents had disturbed the peaceful possession by creating an obstruction in the access to the suit land. Under Section 2(e) of the Assam Land Grabbing (Prohibition) Act, 2010 land grabbing will also include an attempt to grab the land and as per Section 11 of the Act burden of prove is upon the accused to show that he has not grabbed the land. The learned counsel for the review

petitioner further submitted that the respondents instead of proving their lawful entitlement to the suit land before the learned Tribunal and without filing any written statement/objection, invoked the revisional jurisdiction of this Court under Section 115 CPC in order to stifle the land grabbing case at the very initial stage and the impugned Judgment dated 26.10.2022, has resulted in the land grabbing case rendered totally redundant and the petitioner has been deprived of his legal remedy under the Act of 2010.

7. The learned counsel further submitted that the impugned judgment by observing that title suit No. 29/2019, gives rise to a civil dispute, ignores the statutory provisions of 2010 Act which has clearly empowered the Special Tribunal to adjudicate both the civil and criminal disputes and hence, the mere pendency of TS No. 29/2019 cannot deprive Tribunals of its jurisdiction under the 2010 Act. The impugned judgment and order is contrary to the statutory provisions under the 2010 Act as well as the decision of the Hon'ble Apex Court which is rendered per in curiam and therefore can be reviewed under Order 47 Rule 1 of the Code of Civil Procedure, 1908. The learned counsel has placed reliance upon the decision of the Apex Court in **Board of Control of Cricket of India & others vs. Netaji Cricket Club & others** reported in **AIR 2005 Supreme Court 592**.

8. Mr. S. Biswas, learned counsel for the respondent, on the other hand submitted that the facts of the case is clearly laid out in the judgment and order passed by this Court dated 26.10.2022 in Civil Revision Petition No. 7/2022, wherein, it has observed that the instant review petitioner had purchased landed property of 3 bighas, and the route to the purchased land is being blocked by the respondents. The respondents have not in any way

encroach the land said to be bought by the review petitioner and that there is an alternative route through which the present review petitioner can enter into the land purchased by him from respondent No. 1. That the respondents were in continuous possession of the disputed land which originally belonged to Respondent No.1. The learned counsel submitted that from the preamble of the Assam Land Grabbing (Prohibition) Act, 2010 , the purpose of enacting the said act was to restrain the organized attempts on the part of certain lawless persons to grab, either by force or by deceitful means lands whether belonging to the Government, a public sector undertaking, a local authority or any other private persons and that this court in its judgment dated 26.10.2022 passed in Civil Revision Petition No. 7/2022, had rightly held that there is absence of the element of criminal intention on the part of the present respondents, due to the pendency of Title Suit No. 29/2019.

9. The learned counsel for the respondents further submitted that there were no grounds to review the said judgment and order passed by this Court dated 26.10.2022 under Order 47 Rule 1 of the Code of Civil Procedure, 1908. The learned counsel submitted that in the instant case, there is no new grounds highlighted by the counsel for the review petitioner and there is no error apparent on the record. He further submits that case of the Division Bench of this Court in **XXX Vs. State of Assam**, reported in **2017 5 GLT 854**, is not applicable in the instant case wherein, the alleged land grabber had not approached the civil court for the declaration of his right and title, whereas, in the instant case there is a Title suit pending before the civil court. The learned counsel submits that no grounds have been made out under Order 47 Rule 1 for review of the judgment and order passed by this Court and therefore, the review petition is liable to be dismissed and set aside. That the submissions

made by the learned counsel for the review petitioner are grounds which should be raised in an appeal.

10. The learned counsel has relied on the case of ***S. Murali Sundaram Vs. Jothibai Kannan & Ors.*** in Civil Appeal Nos. 1167-1170 of 2023 dated 24.02.2023, wherein the Apex court laid out principles relating to the exercise of review jurisdiction under Order 47 Rule 1 CPC and held that;

“(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some (mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require an long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.”

The learned counsel also cited ***State of Telengana & Ors. Vs. Mohd. Abdul Qasim (Died) per LRs***, reported in ***2024 0 Supreme (SC) 347***, wherein the scope of review has been clearly laid out and it has been stated

that:-

“And who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order ” The learned counsel has also cited ***Shanti Conductors (P) Ltd. v. Assam SEB***, reported in **2020 2 SCC 677** (para 25)

11. I have given my anxious consideration to the submissions made by the learned counsels for both the parties and have also perused the judgment and order dated 26.10.2022 passed in Civil Revision Petition No. 7/2022. This court finds that 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.

The Apex court in ***Shanti Conductors (P) Ltd. v. Assam SEB (supra)*** held that “*The scope of review is limited and under the guise of review, the petitioner cannot be permitted to re agitate and reargue the questions, which have already been addressed and decided. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer to the judgment of this Court in Parsion Devi v. Sumitri Devi [Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715] , wherein in para 9 the following has been laid down : (SCC p. 719)*

“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 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 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".

12. While keeping in mind the decisions of the Apex Court and the provision under Under Order 47 Rule 1 CPC, on the perusal the Judgment & Order dated 26.10.2022 in Civil Revision Petition No. 7/2022, this court finds that this Court had relied on the decision of a Coordinate bench of this Court in ***Anarul Shaikh alias Anar Hussain Vs. Sabir Ali (supra)***, in arriving to a decision *that the elements of land grabbing, unauthorized occupation or possession, associated with criminal intention does not appear to be present and this Court had held that considering the nature of the dispute which is with regards to title over the disputed land pending before the Learned Civil Judge, Tezpur the case cannot be dubbed as land grabbing case with criminal intent under the Assam Land Grabbing (Prohibition) Act, 2010 till the disposal of T.S.No. 29 of 2019.*

However, on a closer perusal of the judgment in ***Anarul Shaikh alias Anar Hussain (supra)***, it is seen that the evidence and pleadings were adduced by both the parties and after the due consideration of the evidence adduced, the learned Tribunal found that there was a case of Land grabbing, thereafter, the Coordinate bench of this Court, considering the evidence on record had come to a finding that:

(quote) *"The evidence and pleadings of the parties clearly shows that though the petitioners did not have title over the disputed land, possession of the petitioners, in the facts and circumstances of the case cannot be termed as "land grabbing", reason being that there was no illegality in possessing the land or in other words, element of criminal intention was totally absent. The dispute in the present case appears to be purely civil in nature because of absence of any criminality, and therefore in my considered view, does not come within the purview of the Land Grabbing Act, and as such the impugned judgment passed by the learned tribunal cannot be allowed to hold the field".*

It is seen that the Coordinate bench had come to the above conclusion only after considering the evidence which was adduced by the parties before the Tribunal. Thus, this court finds that there was an error committed by this Court while passing the impugned Order dated 26.10.2022 in referring to a decision of a coordinate bench of this court which is not appropriately applicable.

13. This court has also taken note of the fact that the judgment in the case of ***Goundla Venkaiah & Anr. (Supra)*** was relied upon by the respondents at the time of hearing of CRP No. 7/2022, but the same did not find mention in the impugned Judgment & Order dated 26.10.2022, wherein the Apex Court had noted that a larger bench in ***V. Laxminarasamma Vs. A. Yadaiah & Ors. (Supra)*** had disapproved the subsequent judgment in ***N. Srinivasa Rao v. Special Court***, reported in ***[(2006) 4 SCC 214]*** which was quoted and relied upon by the learned counsel for the respondents (petitioners in CRP No.7 of 2022).

It is also seen that in **Mandal Revenue Officer v. Goundla Venkaiah, (supra)** it was observed as under:

“25. By Section 9, the provisions of CPC and the Code of Criminal Procedure have been made applicable to the proceedings of the Special Court except insofar as they are not inconsistent with the provisions of the Act. This section also declares that a Special Court shall be deemed to be a civil court or, as the case may be, as the Court of Session and shall have the powers of a civil court and a Court of Session. Section 10 contains special rule of burden of proof. It lays down that where there is an allegation of land grabbing and the land which is the subject-matter of grabbing is prima facie proved to be owned by the Government or by a private person, the Special Court/Special Tribunal shall presume that the person who is alleged to have grabbed the land is a land grabber and it is for him to prove the contrary.

29. The Court then considered the question whether a person prima facie claiming title over the land alleged to have been grabbed can also be treated as covered by the expression “land grabber” and answered the same in the following words : (Konda Lakshmana case [(2002) 3 SCC 258] , SCC p. 283, para 45)

“45. In regard to the ingredients of the expression ‘land grabber’, it is necessary to point out that it is only when a person has lawful entitlement to the land alleged to be grabbed that he cannot be brought within the mischief of the said expression. A mere prima facie bona fide claim to the land alleged to be grabbed by such a person, cannot avert being roped in within the ambit of the expression ‘land grabber’. What is germane is lawful entitlement to and not a mere prima facie bona fide claim to the land alleged to be grabbed. Therefore, the observation of the Division Bench of the High Court in the said Writ Appeal No. 61 of 1978 that the appellant can be taken to have prima facie bona fide claim to the land in dispute which was relevant for the said Land Encroachment Act, cannot be called in aid as a substitute for lawful entitlement to the land alleged to be grabbed, which alone is relevant under the Act.”

31. In Mahalaxmi Motors Ltd. v. Mandal Revenue Officer [(2007) 11 SCC 714] yet

another Bench of two Judges held that a mere allegation of land grabbing is sufficient to invoke the jurisdiction of the Special Court and that civil court's jurisdiction is ousted in all matters which fall within the jurisdiction of the Special Court. The Bench referred to judgments in Konda Lakshmana Bapuji v. Govt. of A.P. [(2002) 3 SCC 258] , Gouni Satya Reddi v. Govt. of A.P. [(2004) 7 SCC 398] and observed : (Mahalaxmi Motors case [(2007) 11 SCC 714] , SCC pp. 732-33, paras 38 & 42-44)

“38. Lawful entitlement on the part of a party to possess the land being the determinative factor, it is axiomatic that so long as the land grabber would not be able to show his legal entitlement to hold the land, the jurisdiction of the Special Court cannot be held to be ousted.

42. The Bench in Konda Lakshmana Bapuji [(2002) 3 SCC 258] has applied both the broader and narrow meanings of the said expression. It would not, however, mean that all the tests laid down therein are required to be satisfied in their letter and spirit. What is necessary to be proved is the substance of the allegation. The proof of intention on the part of a person being his state of mind, the ingredients of the provisions must be considered keeping in view the materials on records as also circumstances attending thereto. What would be germane for lawful entitlement to remain in possession would be that if the proceedee proves that he had bona fide claim over the land, in which event, it would be for him to establish the same.

43. In Konda Lakshmana Bapuji [(2002) 3 SCC 258] this Court has categorically held that the requisite intention can be inferred by necessary implication from the averments made in the petition, the written statement and the depositions of witnesses, like any other fact. The question which must, therefore, have to be posed and answered having regard to the claim of the land grabber would be that, if on the face of his claim it would appear that he not only had no title, but claimed

his possession only on the basis thereof, the same must be held to be illegal. The question in regard to lawful entitlement of the proceedee, therefore, for invoking the charging section plays an important and significant role.

44. We would like to add that the person's purported belief that he is legally entitled to hold the land and his possession is not otherwise illegal must also be judged not only from the point of time when he entered into the possession or when he had acquired the purported title but also from the point of view as to whether by reason of determination of such a question by a competent court of law, he has been found to have no title and consequently continuance of his possession becomes illegal. If the proceedee against whom a proceeding has been initiated under the provisions of the said Act is entitled to raise the question of adverse possession, which being based on knowledge of a lawful title and declaration of the hostile title on the part of the person in possession, there does not appear to be any reason as to why knowledge of defect in his title and consequently his possession becoming unlawful to his own knowledge would not come within the purview of the term 'land grabbing' as contained in Section 2(e) of the Act. The provisions of the Act must be construed so as to enable the tribunal to give effect thereto. It cannot be construed in a pedantic manner which if taken to its logical corollary would make the provisions wholly unworkable. Only because a person has entered into possession of a land on the basis of a purported registered sale deed, the same by itself, in our considered opinion, would not be sufficient to come to the conclusion that he had not entered over the land unauthorisedly, unfairly, or greedily."

The above observation is also reiterated in the decisions of the Apex court in the authorities relied upon by the learned counsel for the review petitioner. It is also noted that the Andhra Pradesh (Prohibition) of Land Grabbing Act 1982 and the Assam Land Grabbing (Prohibition) Act 2010 are similar and the decisions above also are applicable in the instant case.

14. This court finds that though the cited case of the Coordinate bench, in **Abdur Rahim (MD) & ORS vs. Abdul Odud(MD) & Anr. (Supra)** was not cited at the relevant time, however, this court finds that the judgment and order of the Coordinate bench is relevant for the purpose of considering the review petition, wherein, the facts are similar to the instant Civil Revision Petition No. 7/2022.

It is noted that the coordinate bench had held as follows :-

“8. This Court in the case of XXX Vs. In Re: State of Assam, reported (2018) 2 GLR 313, had held that if an alleged land grabber claims or puts up defence of proprietary right or ownership right or possessory right for the land in question, then the civil liability would be adjudicated first and if he fails to establish any such right, then criminal proceedings for prosecution of land grabber would re-commence. Thus, it was held that as per the Scheme of 2010 Act, upon cognizance being taken of the criminal offence of land grabbing, the Special Tribunal would proceed with the prosecution of the land grabber not only for the purpose of punishing him but also to recover the grabbed land from the land grabber for restoring possession of the grabbed land to the person from whom the land was grabbed. It was further held that we have to bear in mind that the principle object of 2010 Act, is not to adjudicate the right, title or possession over the land in question. It was further held that the legislature did not intend to prohibit the criminal trial of a person alleged to have committed an offence of land grabbing rather it postpones the criminal trial till adjudication of civil liability of the alleged land grabber in a summary manner. Therefore, in the opinion of this Court, the proceedings of the case instituted under Assam Land Grabbing (Prohibition) Act is not a suit to decide the right, title and

interest of the parties and, as such, this Court finds that the provisions of Section 10 CPC cannot be invoked for staying the proceedings of any suit, which is lawfully filed and registered before the competent civil Court. The civil suit and Land Grabbing proceedings are for different intents and purposes and, as such, both the suit as well as the Land Grabbing case can co-exist.

9. Under such circumstances, the impugned order dated 12.02.2018, in so far it concerns the exercise of power under Section 10 CPC by the learned Special Tribunal to stay the proceedings of T.S. No. 93/2017, pending before the Court of learned Munsiff, Hojai, Sankardev Nagar, the same is not sustainable on facts in law and, as such, the said order stands set aside by allowing the said suit to proceed in accordance with law.

10. In view of the discussions above, when the Special Tribunal constituted under the 2010 Act is required to first determine the civil liabilities and thereafter the learned Tribunal is required to decide the civil liability about the allegations of land grabbing, in view of the ratio laid down in the case of XXX Vs. State of Assam (supra), no case is made out for quashing the proceedings of Special land (L.G) Case No. 29/2017 and/or to hold it to be ultra vires the provisions of Section 2 (d) and Section 2(e) of the Assam Land Grabbing (Prohibition) Act, 2010.

11. The land grabbing proceeding is required to be heard and disposed of in a summary manner and, as such, in order to ensure speedy trial, mini-trial at every stage of a land grabbing proceedings is neither envisaged nor desired. Therefore, at this stage, this revisional Court is inclined not to interfere in this land grabbing proceedings at an interlocutory stage. Any interference with a land grabbing case at its initial and/or interlocutory stage at a drop of a hat

shall convert such an urgent proceeding into a long drawn proceeding, which would frustrate the very purpose of the said Act.”

This court is in agreement to the findings and decision of the Coordinate bench as reproduced above.

15. In view of the above findings, this court finds that there is error apparent on the face of the record wherein this court in its Judgment & Order dated 26.10.2022 passed in Civil Revision Petition No. 7/2022, had wrongly relied on the decision and findings of a Coordinate bench of this court ***in Anarul Shaikh alias Anar Hussain Vs. Sabir Ali (Supra)***, which was not appropriately applicable. This court had also mistakenly failed to mention the authority, ***Goundla Venkaiah & Anr. (Supra)***, relied upon by the learned counsel for the present review petitioner in view of the findings and reasons discussed hereinabove, this Court finds that *the rule of per incuriam* is applicable in the Order dated 26.10.2022 in CRP No. 7/2022 and accordingly needs to be interfered with.

16. This court finds that in **Board of Control of Cricket of India (supra)** the Apex court held that if the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error.....

Thus, the power of review is inherited in every court to prevent miscarriage of justice or to correct grave and palpable errors committed by it, thus, this Court on considering that the civil and criminal liability has not been

decided by the learned Special Tribunal find it fit to modify its Order dated 26.10.2022 in CRP No. 7/2022, by upholding the order dated 05.01.2022 passed by the Special Judge, Sonitpur, Tezpur, in Petition No. 1108/2021 in LG. Case No.10/2019 but also find it fit to interfere with the said Order dated 05.01.2022 only to the extent, so far as it concerns the stay of the proceedings of T.S No. 29/19 pending before the Learned Civil judge, Sonitpur and the calling for the case records by the learned Special Judge which is found beyond the powers exercisable by the tribunal under the Assam Land Grabbing (prohibition) Act,2010. The learned the learned Special Court Sonitpur, Tezpur shall proceed in the LG Case No.10/2019 in accordance with law, similarly the case before the Civil Judge, Sonitpur, Tezpur shall proceed as per law .

17. On the disposal of Review Petition 182 of 2022, the analogous Review Petition no. 8 of 2023 which is for the review and modification of the order dated 26.10.2022 in CRP No. 7/2022, since there is no specific mention for stay in the proceedings of L.G Case No. 10/2019 also stands disposed of. Accordingly, the interim order passed in Review Petition No. 8 of 2023 also stands vacated.

18. Review Petition 182 of 2022 and Review Petition 8 of 2022 thus stand disposed of as above.

JUDGE

Comparing Assistant