

GAHC030003102023



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

Case No. : Review.Pet./1/2023

Smt. V.L.Nghaki (L) r/b Legal Representative Smt. C. Lalthakimii
R/o Tuikual South Veng
Aizawl

VERSUS

Sh. Zothanmawia and 6 Ors.
S/o Sena (L)
R/o Tuikual South
Aizawl2:The State of Mizoram r/b the Chief Secretary to the Govt. of Mizoram

3:The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Department.

4:The Director
Land Revenue and Settlement Department
Govt. of Mizoram

5:The Assistant Settlement Officer-I
Land Revenue and Settlement
Govt. of Mizoram

6:The Settlement Officer
Land Revenue and Settlement
Aizawl District
Aizawl

7:The Assistant Settlement Officer
Land Revenue and Settlement

Govt. of Mizora

Advocate for the Petitioner : Mr. Johny L Tochhawng (Legal Aid Counsel)

Advocate for the Respondent : Addl. AG/GA, Mizoram for R2 to R7

Linked Case : I.A.(Civil)/64/2023

Smt. V.L.Nghaki(L) r/b Smt. C.Lalthakimi
R/o Tuikual South
Aizawl

VERSUS

Sh Zothanmawia and 6 Ors.
S/o Sena(L)
R/o Tuikual South
Aizawl

Advocate for the Petitioner : Mr. Johny L Tochhawng
Advocate for the Respondent : Mrs. Linda L Fambawl
G.A.
Mizoram for R2-7

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER**

Date : 27-08-2024

Heard Mr. Johny L.Tochhawng, learned legal aid counsel for the petitioner along with Mrs. Emily L. Chhangte, learned legal aid counsel for the private respondents. Ms. Vanneihsiami, learned Government Advocate for the State respondents submits that they would rely on the written objection of the private respondents.

2. This is an application filed under Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of the Judgment & Order dated 27.05.2022 passed by this Court in

RFA No.20 of 2018.

3. Brief facts of the case as projected by Mr. Johny L. Tochwawng, learned counsel for the petitioner, is that the present review petitioner was the defendant No.7 in Civil Suit No. 52 of 2011 and the present respondent No.1 was the plaintiff in the Civil Suit. The present respondent No.1/plaintiff had filed the suit for cancelling the impugned Letter dated 03.02.2011, issued by the present respondent No.3, along with the Order dated 21.04.2011 issued by the present respondent No.6, directing the respondent No.1/plaintiff to demolish the steps constructed by him and also against the Order dated 08.06.2011, wherein the respondent No.1/plaintiff was to demolished the steps within 20 (twenty) days of the said order. Thereafter, the learned Senior Civil Judge, Aizawl after hearing both the parties and on conducting a spot verification of the disputed area, passed its Judgment & Order dated 13.12.2017 in favour of the present respondent No.1/plaintiff.

4. Aggrieved by the said Judgment & Order dated 13.12.2017, the present review petitioner had filed an appeal, registered as RFA No.20 of 2018. The appeal was however, dismissed by this Court, on finding that the spot verification was done on the suggestion and in the presence of the counsels for both the parties and that the findings and observations made by the learned trial court, were in the interest of the case and to secure the ends of justice and hence, should not be questioned at this belated stage.

5. Mr. Johny L. Tochwawng, learned counsel for the petitioner submits that the said Judgment & Order dated 27.05.2022 is liable to be reviewed by this Court since the learned Trial Court in Civil Suit No.52 of 2011 had failed to comply with the letter of law under Order 8 Rule 18 of the Code of Civil Procedure, 1908, wherein the learned Trial Court did not make a memorandum of any relevant facts observed during the inspection of the disputed site, when it conducted the spot verification. There is no

record to indicate that any memorandum of inspection was prepared by the learned Trial Court and it was improper for the learned Trial Court, to base its Judgment solely, on the in question form by the learned Civil Judge (Senior) at the time of the inspection, wherein, the learned Trial Court had come to a conclusion, which is contrary to the evidence of the case.

6. In support of his submission, the learned counsel has relied on the judgment of a Co-ordinate Bench of this Court in the Principal Seat in **Kunjalal Das and Others vs. Sukhada Das and Others** in **2023 SCC Online Gau 159 : (2023) 3 GLT 190 dated 10.th Jan, 2023**, wherein it was observed that inspection of the suit land should not be allowed before recording of evidence.

7. Per contra, Mrs. Emily L. Chhangte, learned counsel for the respondents submits that the instant review petition is liable to be dismissed since the review petitioner has failed to make out any grounds for review of the Judgment and Order of this Court dated 27.05.2022 as provided under Order 47 Rule 1 of Code of Civil Procedure, wherein, the grounds of review are to be examined within the narrow compass of the said provision of law, such as, whether the applicant has failed whether to make out that there is *"a 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 fact of the record, or for any sufficient reasons"*,

8. The learned counsel submits that the grounds of review submitted by the review petitioner, cannot be considered, since the same was not a discovery of new or important matter. That the issue of the learned Trial Court not complying with the provisions of Order 8 Rule 18 of Code of Civil Procedure was already discussed and considered by this court while disposing of the RFA No.20 of 2018 at paragraphs Nos. 16, 17, 18 & 19 of the said Judgment & Order and no new grounds have been made

out in the review petition.

9. Having heard the submissions made by the learned counsels for both the parties, this court finds that the issue whether the learned Trial Court in CS No. 51 of 2011 should have complied with the letter of law under Order 8 Rule 18 of the Code of Civil Procedure, 1908, was already raised by the learned counsel for the review petitioner in RFA No. 20 of 2018 and the matter was already considered by this Court, wherein this court had come to the finding as follows:-

“19. This court finds that since the spot verification was done on the suggestion and in the presence of the counsels for both the parties, the findings and observations made therein, which is in the interest of the case to secure the ends of justice, should not be questioned at a belated stage. This court is also of the considered view that issues framed by the learned trial court had been aptly dealt with in view of the observations made by the learned trial court wherein whether there is a vacant government land measuring 0.40m between the said LSC No.68/1971 and LSC No.829/86 is no longer of significance especially so, when the state respondents have failed to appear before the learned trial court and have not pressed the matter in appeal”.

10. This Court thus finds that no grounds for review of the Judgment & Order in RFA No. 20 of 2018 is made out by the review petitioner in terms of Order 437 Rule 1 of the Code of Civil Procedure, 1908, since the fact that when the learned Judge of the trial court had conducted the spot verification of the disputed area, no memorandum of the spot verification was made, are not discovery of any new and important matter or evidence, which was not within the knowledge of the review petitioner when the RFA No. 20 of 2018 was heard and disposed of.

11. Accordingly, the instant Review Petition No.1 of 2023 stands dismissed and

disposed of.

12. This Court has appreciated the services rendered by the legal aid counsels and accordingly their requisite fees are to be paid by the State Legal Services Authority as per existing rates.

JUDGE

Comparing Assistant