

Court No. - 50

Case :- CIVIL MISC REVIEW APPLICATION No. - 325 of 2024

Applicant :- Ganesh

Opposite Party :- State Of Up And 2 Others

Counsel for Applicant :- Manish Gupta, Ramesh Rai

Counsel for Opposite Party :- C.S.C., Murli Dhar Mishra

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Ramesh Rai, learned counsel for the applicant, Mr. Murli Dhar Mishra, learned counsel for the opposite party no.3 and learned Standing Counsel for the State-respondents.
2. The instant review application has been filed against the final judgement and order dated 15.5.2024 by which writ petition arising out of allotment of chak proceeding has been dismissed after hearing the learned counsel for the parties.
3. Stamp reporter has reported the delay of 32 days in filing the instant review application.
4. Considering the facts and circumstances, the delay in filing the review application is condoned.
5. The instant review application has been filed on the following grounds as mentioned in the memo of revision:

"1. Because, the Hon'ble Court has failed to appreciate the fact that the chak appeal of the petitioner under Section 21(2) of Uttar Pradesh Consolidation of Holdings Act, 1953 has been allowed by the Assistant Settlement Officer of Consolidation, under judgment and order dated 25.05.1993 with categorical finding of fact that the petitioner has been given possession facing Kachcha Road in view of sale deed dated 25.11.1970 and therefore, he entitled chak over the gata no. 88 facing to the road and the learned revisional court namely Deputy Director of Consolidation without meeting out the finding of fact recorded by appellate court altered the chak of the petitioner and in view thereof the order of revisional court is in teeth of provisions of U.P.C.H. Act and liable to have been interfered with by this Hon'ble Court. Thus the judgment and order passed by this Hon'ble Court is desirable to be reviewed.

2. Because, the Hon'ble Court has failed to appreciate the fact that the chak holder no. 299, Radhey Shyam happens to the father of respondent no.3, had already sold out his entire share of gata no. 88 and therefore, the right of chak holder no.299 seized over gata no. 88 and in such view of the matter the chak granted to the chak holder no. 299 over gata no. 88 facing road by the revisional court under the impugned order was clearly illegal, erroneous and against the object and principle of the provisions of U.P. C.H. Act which requires to have been interfered with by exercising the power under Article 226 of the Constitution of India. Thus the judgment and order passed by this Hon'ble Court is desirable to be reviewed to meet the ends of justice.

3. Because, the Hon'ble Court has failed to appreciate the fact that neither chak holder no.299 nor chak holder no. 28, the respondent no. 3, happens to son and father, ever made demand for providing

the chak facing to the Kachcha Road over the Gata No. 88 which is very well evident with the appeal and revision filed by both the chak holders no. 299 and 28 respectively and the revisional court beyond the demand made, passed the impugned order under which chak of the petitioner has been altered, is required to have been interfered with by this Hon'ble Court.

4. Because, the Hon'ble Court has failed to appreciate the fact that the Hon'ble Court while deciding the writ-B No. 23295/1994 (Udai Bhan Vs. D.D.C. and others) under order dated 21.08.2019 pleased to have directed to decide the revision as fresh filed by the respondent no.3, chak holder no. 28 as well as father of the respondent no.3 Radhey Shyam, chak holder no. 299 and the revisional court while deciding the revision under impugned order dated 22.02.2024 went beyond the claim made in the revision so filed and as such the impugned order required to have been interfered with. Hence the impugned judgment and order passed by this Hon'ble Court is desirable to be reviewed.

5. Because, the Hon'ble Court has failed to appreciate the fact that the chak holder no. 404, Smt. Sheetla Devi happens to the mother of the respondent no.3 has never made objection or claim to get chak over gata no. 88 facing to the road at any point of time nor challenged the allotment proceeding confirmed up to stage of Settlement Officer of Consolidation under Section 21(2) of U.P.C.H. Act and in view thereof the revisional court was no manner justified or legally competent to alter the chak of chak holder no. 404 giving chak facing to the road under the Impugned order which required to have been Interfered with by this Hon'ble Court.

6. Because, the Hon'ble Court has failed to appreciate the fact that the revisional court under the impugned order compensated to the respondent no.3 at the cost of the petitioner making alteration in the chak of the petitioner over gata no. 88 where upon the petitioner has continued in possession since 1970 in view of sale deed dated 25.11.1970 giving possession to the petitioner facing to the kachcha road exist at the time of sale deed so executed by Radhey Shyam chak holder no. 299 in favour of petitioner as well to Sheetla Devi and Udai Bhan chak holder no. 404 and 28 respectively, happens to wife and son of the executor of sale deed namely Radhey Shyam. Thus the impugned order required to have been interfered with being violative of Article 14,15, 19 and 21 of the Constitution of India. Hence the impugned judgment and order passed by this Hon'ble Court is desirable to be reviewed.

7. Because, the Hon'ble Court has failed to appreciate the fact that the revisional court reduced the area of the petitioner over Gata No. 88 which is purchased land of the petitioner without any reason only with intention to give undue benefit to the private respondent no.3 which is not permissible under law nor the object of provisions of U.P.C.H. Act, in view thereof the revisional order being illegal unjustified and violative of Article 21 of the Constitution of India was required to have been interfered with by this Hon'ble Court. Hence the impugned judgment and order passed by this Hon'ble Court is desirable to be reviewed to meet the ends of justice.

6. Learned counsel for the applicant pressed the ground setup in the review application one by one. He submitted that the judgement dated 15.5.2024 passed by this Court should be reviewed and writ petition filed by the petitioner should be allowed on the ground setup in the memo of review application as well as in the writ petition.

7. On the other hand, learned counsel appearing for private respondent no.3 submitted that the review application filed by the petitioner / applicant is misconceived as the writ petition has been decided on merit after hearing the counsel for both parties. He submitted that remedy against the final judgement dated 15.5.2024 is before higher forum rather by way of review application before the same. He further submitted that the review application is liable to be rejected.

8. I have considered the argument advanced by learned counsel for the parties and perused the records.

9. There is no dispute about the fact that the instant writ petition was heard on 23.4.2024 in presence of Counsel for the petitioner as well as respondent no.3 and judgment was reserved. There is also no dispute about the fact that this Court vide judgement dated 15.5.2024 dismissed the writ petition filed by the petitioner and maintained the order of deputy director of consolidation dated 20.2.2024.

10. So far as scope of review application is concerned, the Hon'ble Apex Court in the case reported in **JT 1997 (8) SC 480, Parsion Devi and Others Vs. Sumitri Devi and Others** has held as under in Paragraph Nos.7, 8 & 9:-

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. [AIR 1964 SC 1372 : (1964) 5 SCR 174] (SCR at p. 186) this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury [(1995) 1 SCC 170] while quoting with approval a passage from Aribam Tuleswar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389] this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

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".

11. The Judgment of **Parsion Devi (supra)** has been followed by Hon'ble Apex Court in the subsequent judgment reported in **JT 2002 (10) SC 197 (State of Haryana & Others Vs. Mohinder Singh & Others)**.

12. Hon'ble Apex Court in the case reported in **(2023) 160 RD 107 S. Madhusudhan Reddy Vs. V. Narayana Reddy and Others** has held that review is not rehearing. Paragraph no.35 of the judgment rendered in **S. Madhusudhan Reddy (supra)** will be relevant for perusal, which is as under:

"35. In our opinion, even otherwise, recourse to successive review petitions against the same order is impermissible more so, when the Respondents have miserably failed to draw the attention of this Court to any circumstances that would entitle them to invoke review jurisdiction within the ambit of the Rules. Under the rules, the Respondents were not required

to produce "genuine" documents but new documents/evidence that was not within their knowledge and could not have been so even after exercise of due diligence, which could have turned the tables in their favour. Nor has any error apparent on the face of the record been brought out by them."

13. In the instant matter the writ petition arising out of allotment of chak proceeding has been decided on merit after affording proper opportunity of hearing to learned counsel for the petitioner and respondent no.3 and there is no error apparent on the face of record, as such, there is no scope of interference in exercise of review jurisdiction by this Court in view of ratio of law laid down by Hon'ble Apex Court as mentioned above.

14. Considering the entire facts and circumstances of the case as argued by learned counsel for the parties and ratio of law laid down by Hon'ble Apex Court in ***Parsion Devi (supra)*** as well as ***S. Madhusudhan Reddy (supra)***, no ground is made out to review / modify the judgment dated 15.5.2024 passed by this Court.

15. Review application is misconceived and ***rejected*** accordingly.

Order Date :- 6.2.2025

Rameez