

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.102 of 2011

In

First Appeal No. 237 of 1997

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Janak Deo Singh @ Janak Singh

.... Respondent-Petitioner

Versus

The State of Bihar

.....Appellant-Opposite party

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate
Ms. Vagisha Pragya Vacaknavi

For the Respondent/s : Mr. Neeraj Kumar, A.C. to S.C.22.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

- 21 18-09-2015 **1.** This review application has been filed by the petitioner for review of Judgment dated 13.12.2010 passed by me in First Appeal No.237 of 1997 whereby the appeal filed by the State of Bihar was allowed with cost holding that the Civil Court in absence of valid reference under Section 18 of the Land Acquisition Act had no jurisdiction to decide the same.
- 2.** The short facts giving rise to this review application may be stated that three acres of land was acquired by the State of Bihar. The Land Acquisition Officer fixed compensation amount at Rs.1,34,572.33/- and in addition to that Rs.10,500/- as cost was also awarded. The claimant then filed application under Section 18 before the Land Acquisition Judge, i.e., Civil Court. The Land Acquisition Judge advised the petitioner-claimant to file the

application before the Land Acquisition Officer and referred the matter. On 08.10.1994, the Land Acquisition Officer reported that the reference is barred and thereafter, the Land Acquisition Judge decided the matter and enhanced the award.

3. The State of Bihar then filed First Appeal No.237 of 1997. This First Appeal was heard by me and by the aforesaid Judgment, the appeal was allowed with cost.

4. The learned counsel, Mr. Binod Kumar Singh, for the petitioner submitted that in fact there was violation of the provisions of the Land Acquisition Act and no notification either under Section 4 or Section 6 was issued by the authorities under the Land Acquisition Act, therefore, in fact there was no proceeding at all. The State authorities forcibly took possession of the petitioner's 3 biggha 13 dhur land and even no award was prepared by the Land Acquisition Officer. Since there was no proceeding and no award, there was no question of filing application under Section 18 of the old Land Acquisition Act before the Land Acquisition Officer arises. In support of his contention, the learned counsel relied upon :

- i. ***1998 (1) PLJR 316 Baldeo Prasad and Ors. Vs. State of Bihar***

ii. ***1998 (1) PLJR 366 Anil Kumar Gupta Vs. State of Bihar***

iii. ***1988 PLJR 223 Haripada Mandan Vs. State of Bihar.***

5. The learned counsel next submitted that the petitioner was not noticed to the award prepared by the Land Acquisition Officer and more over when there was no award prepared by the Land Acquisition Office, there is no question of serving the same on the petitioner. The learned counsel relying on the decision of the Supreme Court reported in ***AIR 2012 SC 1624*** submitted that even if the appellant was served with notice, but he could not have made effective reference because copy of the award was not served on him, as such there was no question of reference under Section 18 of the Land Acquisition Act arises.

6. The learned counsel further submitted that when properties of citizens have been compulsorily acquired for public purposes, the citizens have a right to receive adequate compensation and the State has to give compensation. The State has to act fairly and justly to do what fairness and justice demand. Defendant cannot take a legalistic view of the matter to deprive the citizens of their legitimate claims on mere technicalities. The rights of citizen should not be trampled upon. In this connection,

the learned counsel relied upon **2014 (3) PLJR 793 Arjun Yadav Vs. State of Bihar.**

7. The learned counsel then submitted that in fact the application under Section 18 of the old Land Acquisition Act was filed within time before the wrong forum, i.e., before the Civil Court, therefore, Section 14 of the Limitation Act is applicable and the Land Acquisition Officer could have excluded the period for which the petitioner was pursuing the matter before the Land Acquisition Judge, i.e., Civil Court. But the Land Acquisition Officer wrongly held that the application under Section 18 of the Land Acquisition Act is barred by law of limitation. The learned counsel submitted that while disposing of the First Appeal by the Judgment under review, all these settled principal of law laid down by the Supreme Court as well as by the High Court were not considered and, therefore, the Judgment may be reviewed.

8. The learned counsel also relied upon a decision of the Supreme Court in the case of **Laxmi Devi Vs. State of Bihar 2015 (7) SCALE 555** and submitted that the Land Acquisition Act as amended from time to time required award to be passed even in respect of lands expropriated by the State pursuant to the exercise of special powers in cases of urgency contained in Section 17 thereof. The learned counsel submitted that in the said decision,

the Hon'ble Supreme Court set aside the acquisition dated 18.11.1987 for non-compliance of the provisions of Section 11A of the Land Acquisition Act. On the basis of this decision, the learned counsel submitted that here also no award was prepared and there is no compliance of any provision of Land Acquisition Act, as such the acquisition itself is liable to be set aside.

9. On the other hand, the learned counsel, Mr. Neeraj Kumar, A.C. to S.C.22, submitted that this is not the case of the petitioner either before the Land Acquisition Judge or before the Land Acquisition Officer and for the first time, these points are being argued before the High Court that in a review application, there is no factual basis for all these matters or the points raised by the learned counsel. The learned counsel further submitted that none of the decisions relied upon by the petitioners are applicable in the present case as all the decisions are passed in jurisdiction under Article 226 of the Constitution of India. Therefore, the learned A.C. to S.C.22 submitted that the review application is liable to be dismissed.

10. Perused the Judgment dated 13th December, 2010 passed by me in First Appeal No.237 of 1997. At the time of hearing of this First Appeal, the petitioner was represented by Mr. Bipin Bihari Singh, Advocate. All the points which are being



raised before this Court were never raised by him at the time of hearing of the First Appeal. The only question was whether there was valid reference under Section 18 of the Land Acquisition Act or not. From perusal of the decisions relied upon by the learned counsels for the petitioner referred to above, it appears that in those cases, the petitioners therein directly challenged the acquisition of their lands on one ground or the other available to them which were purely question of law and there was no disputed questions of fact. Here in this case, from perusal of the Judgment itself, it becomes clear that the petitioner filed the application under Section 18. He never challenged the proceeding itself. It was never his case that award was not prepared or that no notice was issued. His only case is that the Land Acquisition Office has not fixed the proper and just market value of the land acquired. Therefore, from the facts of the decisions relied upon, it appears that they are entirely different.

11. It is settled principle of law that **‘the Court should not place reliance upon a judgment without discussing how the factual situation fits with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the materials facts and the issues involved in the case and argued on both sides. A judgment may not be**

followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. A judgment of the Court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a word of difference between the conclusions in two cases.’ In this matter reference may be made to the decision of Supreme Court of *Narmada Bachao Andolan Vs. State of M.P. AIR 2011 SC 1989*.

12. So far this case is concerned, admittedly this is an application filed by the petitioners for review of the Judgment passed in the First Appeal. Order 47 Rule 1 provides that review is maintainable if from the discovery of a new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or would 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. Here all the argument advanced by the learned counsel for the petitioner appears to be on merit and in substantially, it is submitted that the settled principle of law have not been considered while disposing of the First Appeal and all

points raised are entirely new points.

13. The Hon'ble Supreme Court recently in the case of *Kamlesh Verma Vs. Mayawati AIR 2013 SC 3301* held that **'the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is 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. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched.'** In the present case as stated above all the matters / points raised by the learned counsel for the petitioners are foreign materials and not covered under any of the Proviso and any of the provisions mentioned in Order 47 Rule 1 of the Code of Civil Procedure and, therefore, in my opinion, this is not a fit case of review and accordingly, I find no merit in the review application. Thus, this Review Application is dismissed.

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(Mungeshwar Sahoo, J)