

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPEAL (REVIEW) NO. 15 OF 2015

1. Gita Bhalla,
Major in age,
Resident of F-158, Malcha Marg,
New Delhi – 110028.
 2. Ritu Dalmia,
Major in age,
Resident of B-72, Greater Kailash,
New Delhi – 110048.
- ... Petitioners

V e r s u s

1. State of Goa,
Rep. By Chief Secretary,
Government of goa, Secretariat,
Porvorim, Goa, 403 501.
 2. Revenue Department,
Rep. By Secretary, Government
of Goa, Secretariat, Porvorim,
Goa 403501
 3. Collector,
South Goa District,
Collectorate, Margao, Goa.
403601.
 4. Special Land Acquisition Officer,
PWD (Cell), Altinho,
Panaji, Goa, 403 001.
 5. Deputy conservator of Forests,
Wildlife and Ecotourism,
Dayanand Smruti Bldg.,
Gomantak Maratha Samaj Bldg.,
S. V. Road, Panaji, Goa, 403 001.
 6. Directorate of Settlement and
Land Records, Collectorate Building,
Swami Vivekanand
Road, Panaji, Goa – 403 001.
- ... Respondents

Dr. Mrs. Menaka Guruswamy and Mr. Shivan Desai, Advocates for the Petitioners.

Mr. Vivek Rodrigues, Government Advocate for the Respondents.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Judgment reserved on : **9th September, 2015**
Judgment pronounced on : **27th October, 2015**

ORDER (Per F. M. Reis, J.)

Heard Dr. Ms. Menaka Guruswamy, learned Counsel appearing for the Petitioners-Appellants and Mr. Vivek Rodrigues, learned Government Advocate, appearing for the Respondents.

2. The matter was posted for hearing on the application for condonation of delay as well as the application for review filed by the Petitioners.

3. We have heard the learned Counsel appearing for the respective parties. The application, inter alia, seeks for the review of the Judgment and Order dated 09.12.2014 passed by this Court in Writ Petition no. 478 of 2014 and, consequently, to set aside the Notification under Section 6 of the Land Acquisition Act, 1894 dated 21.04.2014. It is the case of the Petitioners that there is a grave misconception of law in the present case which has a material bearing on the Judgment and Order under review as it had proceeded under the Act of 1894, after it had been repealed by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (“*Act of 2013*” for short), and, consequently, the proceedings for acquisition of the subject land under the Land Acquisition Act, 1894, (“*Act of 1894*” for short), had lapsed. It is further contended that as such the Award passed under the said Act of 1894 would be a

nullity as the acquisition of the subject land had already lapsed. It is therefore pointed out that as this aspect has not been considered by this Court whilst passing the Judgment by this Court in Writ Petition no. 478 of 2014, such Judgment deserves to be reviewed and the acquisitions initiated by the Respondents in terms of the provisions of the said Act of 1894 are to be quashed and set aside.

4. Dr. Mrs. Guruswamy, learned Counsel appearing for the Petitioners, has pointed out that the records established that the Notification under Section 6 of the said Act of 1894 was published subsequent to the coming into force of the said Act of 2013 and, as such, in terms of Section 24(1) of the said Act of 2013, the earlier proceedings had lapsed and, consequently, the Notification under Section 6 of the said Act of 1894 has no legal sanctity. Learned Counsel has taken us through the provisions of Section 114 of the said Act of 2013 to point out that such provisions are applicable save as otherwise provided in the said Act of 2013 and, consequently, according to the learned Counsel, the provisions of Section 14 cannot save a situation wherein the proceedings initiated under the said Act of 1894 had already lapsed. The learned Counsel has thereafter taken us through the provisions of Section 4 as well as Section 6 of the said Act of 1894 to point out that a Notification under Section 6 is a conclusive proof that the proceedings are intended to be initiated by the appropriate Government and, as such, unless and until such notification under Section 6 is issued, it cannot be said that the proceedings of acquisition had already been initiated for the purpose of Section 24(1) of the said Act of 2013. Learned Counsel fairly points out that in fact this point was not even raised in the Writ Petition no. 478 of 2014 nor such arguments were advanced during the course of the hearing of the earlier Writ Petition.

Learned Counsel further pointed out that it was a bonafide lapse on part of the Petitioner in not raising such contention and, according to the learned Counsel, as such, contention is based on the provisions of law, this Court can review the earlier Judgment in terms of Order 47 Rule 1 of the Civil Procedure Code on the ground of sufficient cause. Learned Counsel further pointed out that as this legal aspect was not considered by this Court whilst passing the Judgment disposing of the said Writ Petition, there is a misconception of law which will require this Court to review its earlier Judgment. Learned Counsel as such points out that the Review Petition filed by the Petitioners, deserves to be considered by this Court. Learned Counsel further submits that on legal advise, the Petitioners had filed a Special Leave Petition before the Apex Court which was thereafter withdrawn as the Petitioners desired to file a Review Petition before this Court. The learned Counsel further submits that the Petitioner acted bonafide and, as such, they have made out a case for review of the said Judgment passed by this Court.

In support of her submission, the learned Counsel has relied upon the Judgment of the Apex Court reported in **(2013) 12 S.C.C. 649** in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*** and **(2005) 2 SCC 237** in the case of ***Divuisional Manager vs. Munnu Barrick & Ors.*** Learned Counsel as such submits that the delay be condoned and the Review Petition be allowed.

5. On the other hand, Shri Vivek Rodrigues, learned Government Advocate, has pointed out that on plain reading of Section 24(1) of the said Act, once acquisition proceedings have been initiated in terms of the provisions of the said Act of 1894, the only benefit to the person interested in such proceedings

wherein Award has not been passed, the compensation would be determined under the said Act of 2013. Learned Government Advocate further pointed out that the initiation of proceedings for acquisition start when Section 4 Notification is published and, as such, the contention of the learned Counsel appearing for the Petitioners that such proceedings are initiated only after Section 6 Notification is published is totally erroneous and deserves to be rejected. Learned Government Advocate further submits that accepting such contention, would result in adding words in the provisions of Section 24(1) of the said Act of 2013 which is not permissible in law. Learned Government Advocate further submits that as such the contention of the learned Counsel appearing for the Petitioners that the Petitioners had made out a case for review is misplaced. Learned Government Advocate further pointed out that even otherwise in terms of Section 114 of the said Act of 2013, the repeal would not effect the rights guaranteed under Section 6 of the General Clauses Act and, as such, as in the present case, admittedly, the acquisition was initiated by issuing the Section 4 Notification under the Act of 1894, much prior of the coming into force of the Act of 2013, the repeal would not effect the right of the Respondents to proceed with the acquisition in terms of the Act of 1894 subject to what has been provided in Section 24(1) of the Act of 2013. Learned Government Advocate further pointed out that even for the purpose of exercising jurisdiction of a review in terms of Order 47 Rule 1, there has to be an error apparent on the face of record and the very fact that the Petitioners admit that such contention was not raised in the Writ Petition nor arguments advanced during the course of the hearing of the Petition would itself suggest that there is no error apparent on the face of record to review the Judgment passed by this Court. The learned Government Advocate further submits that the word “*sufficient cause*” is to

be read *ejusdem generis* to the situations as referred to in the said provisions and, consequently, a review cannot be sought on the ground which were not raised nor adverted to whilst passing the Judgment under review.

Learned Government Advocate in support of his submission has relied upon the Judgment of the Apex Court reported in **(2014) 3 SCC 183**, in the case of ***Opune Municipal Corporation & anr. vs. Harakchand Misirimal Solanki & Ors.***

6. Upon hearing the learned Counsel, we find that the main contention of the learned Counsel appearing for the Petitioners is that as the Notification under Section 6 of the said Act of 1894, was issued after the coming into force of the said Act of 2013, the acquisition proceedings itself had lapsed.

7. Section 24(1) of the said Act of 2013, reads thus :

“24. Land Acquisition process under Act no. 1 of 1894 shall be deemed to have lapsed in certain cases.-(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), -

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not

been repealed.”

8. The said provisions clearly provides that notwithstanding anything contained in the said Act, in any case of Land Acquisition proceedings initiated under the said Act of 1894, when no Award under Section 11 of the said Act has been made, then all provisions of this Act relating to the determination of compensation shall apply. In the present case, it is not disputed that the Notification under Section 4 of the said Act of 1894 was issued on 24.01.2013 i.e. much prior to the coming into force of the said Act of 2013 on 01.01.2014. The contention of the learned Counsel appearing for the Petitioners, however is that acquisition proceedings are initiated only after the Section 6 Notification is issued under the Act of 1894.

In order to examine such contention of the learned Counsel appearing for the Applicant that acquisition proceedings are initiated only after Section 6 Notification is issued under the Act of 1894, it would appropriate to examine the scheme of the Land Acquisition Act. Acquisition means taking, not by voluntary Agreement but by the authority of an act of parliament and by virtue of compulsory powers thereby conferred. In cases of Land Acquisition, the properties are taken by the State permanently and the title to the property vests in the State. The Land Acquisition Act makes complete provisions for acquisition, for acquiring title over the lands and payment of compensation. The heading of Section 4 states *“publication of preliminary notification and powers of Officers thereof”* Sub-section (1) of Section 4 provides that when it appears to the appropriate Government, that land in any locality is needed or is likely to be needed for public purpose or for a Company, a Notification to that effect shall be published in the Official Gazette and

in two local newspapers. Sub-section (2) provides that thereupon it shall be lawful for any Officer either generally or specifically authorised by such Government in this behalf or for its servants and workmen to enter upon to survey and take level of any land in such locality to deal or bore in the sub-soil and to do other acts necessary to ascertain whether land is adapted for such purpose etc. The provisions show that the Officers and servants and Workmen get a lawful authority to enter upon and survey the land and also to do other work, only after a preliminary Notification under Section 4(1) has been published. Section 5(A) enables the persons interested to raise objections to such acquisition and after due hearing, a report has to be submitted by the Land Acquisition Officer to the Appropriate Government. Thereafter, if land is so needed, a declaration under Section 6 of the Act of 1894 is published in the Official Gazette and in the local newspapers. Thereafter, the Collector is required to issue a notice to the interested persons under Section 9(1) of the Act of 1894 stating that the Government intends to take possession of the land and a claim for compensation of all the interest in such land may be made to Land Acquisition Officer. Thereafter, an Award is passed by the Land Acquisition Officer under Section 11 and ultimately the possession of the land is taken in terms of the said Act of 1894. The provisions of Section 11(1) and Section 23(1) of the said Act of 1894 enjoins the determination of the market value of the land on the date of the publication of the Notification under Section 4(1) of the said Act of 1894 to be awarded for the land acquired under the said Act of 1894. These provisions clearly show that publication of a Notification under Section 4(1) of the said Act of 1894 is a *sine qua non* for any proceedings for acquisition under the said Act of 1894. In other words, the proceedings for acquisition in terms of the said Act of 1894 are initiated from the date the

Notification under Section 4(1) of the said Act of 1894 is published.

9. However, commencing or originating proceedings for acquisition of land under the said Act of 1894, would clearly mean initiating proceedings for such acquisition. In such circumstances, the contention of the learned Counsel appearing for the Petitioners that acquisition proceedings are initiated only upon a declaration under Section 6 of the said Act of 1894 is published, cannot be accepted. As pointed out herein above, the proceedings for acquisition are initiated on the basis of a Notification under Section 4(1) of the said Act of 1894 and, consequently, it cannot be said that for the purpose of Section 24(1) of the said Act of 2013, the proceedings for acquisition are initiated only after a publication of a Notification under Section 6 of the said Act of 1894. Merely because, a Notification under Section 6 of the said Act of 1894 is conclusive evidence that the land is needed for public purpose, cannot be intended to state that the proceedings for acquisition are initiated only after such Notification under Section 6 of the said Act of 1894 is published.

10. Apart from that, on going through the provisions of Section 114 of the said Act of 2013, the effect of the provisions of Section 6 of the General Clauses Act are made applicable. Section 6 of the General Clauses Act 1897, reads thus :

“6. Effect of repeal.- Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

11. On going through the said provisions, it clearly provides that acts which have been initiated prior to the coming into force of the new Act would not affect the rights and obligations of a party to proceed on the basis that the repealed Act is still in force. In such circumstances, on this count also, the contention of learned Counsel appearing for the Petitioners that the proceedings for acquisition under the said Act of 1894 in respect of the subject land stands lapsed, in terms of Section 24 of the said Act of 2013, cannot be accepted.

12. In the present case, the specific contentions sought to be raised in the present Review Petition were admittedly not raised whilst passing the said Judgment dated 09.12.2014 passed in Writ Petition no. 478 of 2014. Hence, it cannot be said that there is an error apparent on the face of record in terms of the provisions of Order 47 Rule 1 of the Civil Procedure Code to entertain the above Review Petition.

13. Besides that, it is an admitted position, that such contention was not raised either as a ground in the Writ petition nor any arguments on this aspect were advanced whilst disposing of the said Writ Petition by Judgment dated 09.12.2014. This itself thus cannot be treated to be an error apparent on the face of record nor a sufficient reason which would call for a review of the Judgment passed by this Court. The Apex Court in the Judgment reported in **(2014) 7 SCC 663** in the case of ***Usha Bharti v. State of U.P.***, has observed at paras 68 to 70 thus :

“68. We have no hesitation in accepting the submission of Mr Bhushan that the High Court or this Court, in exercise of its powers of review can reopen the case and rehear the entire matter. But we must hasten to add that whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 CPC as well as the rules framed by the High Courts and this Court. The limits within which the courts can exercise the powers of review have been well settled in a catena of judgments. All the judgments have in fact been considered by the High Court in pp. 16 to 23. The High Court has also considered the judgment in *S. Nagaraj v. State of*

Karnataka, which reiterates the principle that: (SCC p. 619, para 19)

“19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice.”

69. These principles are far too well entrenched in the Indian jurisprudence, to warrant reiteration. However, for the sake of completion, we may notice that Mr Bhushan had relied upon *Board of Control for Cricket in India v. Netaji Cricket Club* and *Green View Tea & Industries*. It would be useful to reiterate the following excerpts:

69.1. In *Board of Control for Cricket in India*, it was observed that: (SCC p. 765, para 90)

“90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words ‘sufficient reason’ in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact

or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine '*actus curiae neminem gravabit*'.

.69.2. This Court in *Green View Tea & Industries* reiterated the view adopted by it in *S. Nagaraj*. Therefore, the ratio of *Green View Tea* is not applicable in this case.

70. In view of the observations made in the aforesaid judgments, this Court would not be justified in holding that the High Court has erred in law in not reviewing its earlier judgment.

14. Taking note of the said observations of the Apex court referred to herein above and for the reasons stated herein above, we find that there is no error apparent on the face of record or any sufficient reason to entertain the above review Petition. The Judgments relied upon by the learned Counsel appearing for the Petitioners, in support of the above Review Petition, are not applicable to the facts of present case.

15. In view of the above, there is no merit in the above Review Petition, which stands accordingly rejected.

K. L. WADANE, J.

F. M. REIS, J.

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