

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT  
CHANDIGARH

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R.A. - C.W. 442 of 2014(O&M)

IN

C.W.P. No. 14232 of 2004

**Date of Decision: 08.05.2015**

Virender Singh Malhan

.....Petitioner/Applicant

*Versus*

Haryana Urban Development Authority and others

.....Respondents

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**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL.  
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.**

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Present: Mr. Sukhwinder Singh Nara, Advocate, for the  
applicant/petitioner.

Mr. Ajay Nara, Advocate, for respondents No. 1 and 2.

Mr. Yogesh Putney, Advocate, for respondent No. 5.

Mr. Amit Khatkar, Advocate, for respondent No. 10.

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1. *Whether Reporters of local papers may be allowed to see the Judgment? Yes/No*

2. *To be referred to the Reporter or not? Yes/No*

3. *Whether the judgment should be reported in the Digest? Yes/No*

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**MAHAVIR S. CHAUHAN, J.**

**C.M. No. 10232 of 2014:**

Heard.

02. For the reasons elaborated during the course of hearing and submissions contained in the application, which is supported by affidavit, the applicant is found to have shown sufficient cause for condonation of delay in filing the application for review.

03. Delay in filing the review application, therefore, is condoned and the application is, accordingly, disposed of.

**C.M. No. 5279 of 2015:**

04. Heard.

05. Reply of Estate Officer, Haryana Urban Development Authority ('HUDA' for short), Panchkula is taken on record.

06. Application is disposed of.

**C.M. No. 5182 of 2015:**

07. Heard.

08. Documents, Annexures A-2 to A-10, are taken on record.

09. Application is disposed of.

**R.A. - C.W. 442 of 2014**

10. In the year 2003, HUDA published an advertisement for allotment of residential plots in different Sectors of Panchkula, which included 10 plots of 14 marlas and 09 plots of 06 marlas in Sector 04, Mansa Devi Complex. In terms of policy of HUDA, 10% plots of General category were reserved for employees of Haryana Government, including employees of its Boards, Corporations, Municipal Corporations/Committees, Improvement Trusts and Cooperative banks etc. Applications from the oustees were also invited. The applicant, who was working as a lecturer in Government College, Panchkula, applied for allotment of a 14-marla plot being a Government employee, with requisite earnest money. Various oustees also applied for such allotments. However, in the draw of lots held on March 23, 2004 for allotment of residential plots of the size of 14 marlas in Sector 04, Mansa Devi Complex, out of 10 plots of 14 marlas, 08 were allotted to the oustees, who had a prior/preferential right. Since, the remaining plots were less than ten, no plot could be reserved for the Government servants. Another plot became available later

on and a draw of lots in respect of three plots of general category was held wherein applications of those who had applied under various reserved categories, including the applicant, were also included. The applicant, unfortunately, remained unsuccessful. By way of Civil Writ Petition No. 14232 of 2004, titled Virender Singh Malhan versus Haryana Urban Development Authority & others, applicant challenged the draw of lots held on March 23, 2004 for allotment of residential plots of the size of 14 marlas in Sector 04, Mansa Devi Complex, on the ground that his application was not considered against the 10% quota reserved for Government servants and 14-marla plots could not be allotted to the oustees, therefore, the draw of lots was illegal.

11. In the written statement, HUDA came out with a plea that quota reserved for Government servants and others was to be considered after satisfying the claims of eligible oustees who had a preferential right for allotment of plots under policy of HUDA and in the instant case eight, out of ten 14-marla plots, were allotted to the oustees and after satisfying claims of the oustees only two plots were left. Another plot became available later on and as, such, no 10% reservation was possible but name of the applicant was considered alongwith applicants of general category. It was also stated in the written statement that an oustee entitled for allotment of a one kanal plot was entitled to apply for a smaller plot, say a 14-marla plot.

12. The Civil Writ Petition, after hearing, came to be dismissed by this Court vide order dated September 18, 2013 by observing:

*“After hearing learned counsel for the parties, we do not find any merit in the present petition as undisputedly the oustees whose land has been acquired, have a prior claim for allotment as per the HUDA policy, and after*

*the allotment of the plot to the oustees the remaining plots is to be offered to the General category. Since, the remaining plots were three, there was no possibility for making 10% reservation for Government employee. Therefore, in our opinion, the HUDA was perfectly justified in not regularising any plot to Government Servant against 14 marla plots. Merely because the application of the applicant was considered in General category, though he had applied as a Government servant, does not make the draw of plots illegal. The applicant was given opportunity to be considered in the said draw of lots in General category, therefore, no prejudice is caused to him. In these facts, we do not find any merit in the instant petition and the same is hereby dismissed.”*

13. Applicant assailed the correctness of order dated September 18, 2013 before the Hon’ble Supreme Court by way of Special Leave to Appeal Petition (C) No. 9371 of 2014, Virender Singh Malhan versus Haryana Urban Development Authority & others which has been disposed of vide order dated July 11, 2014 in the following terms:

*“It is contended by the learned counsel appearing for the petitioner that the High Court did not consider the cause raised before it, i.e. that the allotment made to the oustees is contrary to the policy in force which did not contemplate allotment of plot measuring 14 marlas to the Ousteers. We have noticed and perused the relevant pleadings in this regard and the order of the High Court. The petitioner is at liberty to approach the High Court by way of review, if he so desires. The special leave petition is disposed of accordingly. We make it clear that we have expressed no opinion on merit.”*

14. The applicant has now invoked, by way of this application, provisions of Section 114 and Rule (1) of Order XLVII of the Code of Civil Procedure, 1908 (for short, “CPC”) for review of order dated September 18, 2013, alleging that his plea that allotment of plots to the oustees was in violation of the policy of HUDA, has not been considered by this Court while dismissing the Civil Writ Petition.

15. On behalf of HUDA a reply to the application for review has been filed wherein applicant's claim is vehemently opposed.

16. We have heard learned counsel for the parties and have also perused the record.

17. It is argued by learned counsel appearing for the applicant that under the HUDA policy (Annexure P3 with the Civil Writ Petition) 14-marla plots could not be allotted to the oustees and, as such, the draw of lots held on March 23, 2004 is illegal and deserves to be set aside and a direction needs to be issued to the HUDA to consider applicant's case for allotment of a 14-marla plot to him from 10% quota reserved for Government employees. The submission, however, is controverted by the learned counsel for the appearing respondents saying that the oustees have a preferential right for allotment of plots and after satisfying their claims sufficient number of plots were not available to be reserved for any category, including Government employees and, even otherwise, only right available to the applicant was for being considered for allotment of a plot to him for which his application was included in the draw of lots held in respect of the three available plots but luck did not favour him.

18. Nothing more has been urged.

19. Section 114, CPC, provides for a substantive power of review by a Court. Section 114, CPC, although does not prescribe any limit on the power of the Court but such limitations have been provided for in Order XVII, Rule 1, CPC, which reads as under:

***“Application for review of judgment.-(1) Any person considering himself aggrieved,—***

***(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,***

*(b) by a decree or order from which no appeal is allowed, or*

*(c) by a decision on a reference from a Court of Small Causes,*

*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 to the Court which passed the decree or made the order."*

20. In order to appreciate the scope of a review, Section 114, CPC, has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit." The parameters are prescribed in Order XLVII, CPC, which permit a party to the lis to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulates a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoy a favourable verdict. This is amply evident from the explanation in Rule 1 of the Order XLVII, CPC, which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and

efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection. Hon'ble Supreme Court and this Court, on numerous occasions, have deliberated upon the issue of scope of review proceedings, arriving at the conclusion that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC.

21. Hon'ble Supreme Court in **M/s. Thungabhadra Industries Ltd. (in all the Appeals) v. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur**, AIR 1964 1372, held as follows:

*"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 characterized 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. Where without any elaborate argument one could point to the error and say here is a substantial point of law which states one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."*

22. In **Meera Bhanja v. Smt. Nirmala Kumari Choudary**, 1995(1) RRR 499: AIR 1995 Supreme Court 455 it was held that :

*"It is well settled law that the 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. In connection with the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma** speaking through Chinnappa Reddy, J. has made the following pertinent observations :*

*It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent*

*miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit. That would be in the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of error committed by the Subordinate Court."*

23. A perusal of the Order XLVII, Rule 1, CPC, shows that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.

24. In **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, AIR 1979 Supreme Court 1047**, Hon'ble Supreme Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal, Hon'ble Supreme Court held as under :

*"It is true as observed by this Court in Shivdeo Singh v. State of Punjab, ( AIR 1963 Supreme Court 1909) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of*

*review which inherest in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court."*

25. The judgment in Aribam's case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of **Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale**, AIR 1960 Supreme Court 137 were also noted :

*"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions shows the alleged error in the present case is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."*

26. It is also pertinent to mention the observations of Hon'ble Supreme Court in the case of **Parsion Devi v. Sumiri Devi**, 1997(4)

RCR(Civil) 458 : (1997) 8 SCC 715. Relying upon the judgments in the

cases of Aribam's (supra) and Smt. Meera Bhanja (supra) it was observed as under :

*"Under Order 47, Rule 1, Civil Procedure Code 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, Civil Procedure Code 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."*

27. Hon'ble Supreme Court in **N. Anantha Reddy v. Anshu Kathuria**, 2013(14) Scale 585, ruled as under

*"9. A careful look at the impugned order would show that the High Court had a fresh look at the question whether the Appellant could be impleaded in the suit filed by the Respondent No. 1 and, in the light of the view which it took, it recalled its earlier order dated 08.06.2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order dated 08.06.2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits."*

28. In **Union of India v. Sandur Manganese & Iron Ores Ltd.**, 2013(8) SCC 337: 2013(6) Scale 257, Hon'ble Supreme Court has ruled as under:

*"22. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In **Parsion Devi & Ors. v. Sumitri Devi & Ors.**, 1997(4) R.C.R.(Civil) 458 : (1997) 8 SCC 715, this Court held as under :-*

*"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 I 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."*

29. It, thus, comes out that under Rule (1) of Order XLVII, CPC, a judgment/order may be open to review 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 Rule (1) of Order XLVII , CPC.

30. Reverting to the case in hand, it is noticed that as per case of the applicant himself in paragraph No. 04 of the Civil Writ Petition, it was mentioned in the brochure itself that oustees were also called upon to submit applications for allotment of plots to them and that the plots required for settlement of oustees' claims were to be deducted from the total number of available plots and it was thereafter that the remaining plots were to be allotted to the eligible applicants under general and reserved categories. The applicant submitted application for allotment of a plot in full knowledge of what was stated in the brochure and, as such, is estopped from making any grievance in the matter.

31. Further, in the written statement it was the categorical stand of the HUDA that an applicant (the oustee) entitled for allotment of a one kanal plot was entitled to apply for a 14-marla plot. The applicant, in his wisdom, chose not to controvert this stand of the HUDA by filing a

rejoinder or during the course of arguments. During the pendency of the instant application, on December 05, 2014, when confronted with a question whether the oustees to whom 14-marla plots were allotted were entitled for such allotment, learned counsel for the applicant sought time to verify this fact and apprise the Court but inspite of grant of two opportunities he has failed to respond to the question. Silence of the applicant in the matter leads to the irresistible inference that he has no material to dispute oustees' claim for 14-marla plots in the draw of lots under reference.

32. In view of the above, we do not see any ground to review order dated September 18, 2013. Review application, therefore, fails and is dismissed.

33. No costs.

**(SATISH KUMAR MITTAL)**  
**JUDGE**

**(MAHAVIR S. CHAUHAN)**  
**JUDGE**

08.05.2015  
*adhikari*