

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.5679 of 2011

=====

BRIGADIER RAMNANDAN PRASAD SINGH, SON OF LATE CHANDRA MANI PRASAD SINGH, RESIDENT OF VILLAGE-BABHANGAMA, P.O.-PAHSARA BABHANGAMA, P.S.-NOWKOTHI VIA MAJHAUL, DISTRICT-BEGUSARAI AT PRESENT RESIDENT AT HOUSE NO.9, SECTOR 23, GURGOAN, HARAYANA.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR THROUGH THE DISTRICT MAGISTRATE, BEGUSARAI.
2. MR. C. ASHOKBARDHAN, THE SECRETARY, DEPARTMENT OF REVENUE AND LAND REFORMS, GOVERNMENT OF BIHAR, OLD SECRETARIAT, PATNA.
3. MR. JITENDRA SRIVASTAV, THE DISTRICT MAGISTRATE, BEGUSARAI.
4. MR. GULAB CHANDRA, THE DISTRICT LAND ACQUISITION OFFICER, BEGUSARAI.
5. MR. SHARJU BITHA, THE CHIEF ENGINEER, WATER RESOURCES DEPARTMENT, SAMASTIPUR.
6. MR. MAHENDRA PRASAD SINGH, THE EXECUTIVE ENGINEER, FLOOD CONTROL DIVISION-1, KHAGARIA.
7. MR. SURESH SINGH, THE EXECUTIVE ENGINEER, FLOOD CONTROL DIVISION, BARAUNI CAMP, BEGUSARAI, DISTRICT-BEGUSARAI.
8. MR. P.K. MANDAL, THE SUB-DIVISIONAL OFFICER, FLOOD CONTROL AND WATERWAYS SUB-DIVISION, MAJHAUL CAMP BEGUSARAI, DISTRICT-BEGUSARAI.

.... RESPONDENT/S

with

=====

Civil Review No. 133 of 2011

IN

Civil Writ Jurisdiction Case No. 13112 of 2010

=====

1. THE STATE OF BIHAR THROUGH THE DISTRICT MAGISTRATE, BEGUSARAI.
2. THE SECRETARY, DEPARTMENT OF REVENUE AND LAND REFORMS, GOVERNMENT OF BIHAR, OLD SECRETARIAT, PATNA.
3. THE DISTRICT MAGISTRATE, BEGUSARAI.
4. THE DISTRICT LAND ACQUISITION OFFICER, BEGUSARAI.
5. THE CHIEF ENGINEER, WATER RESOURCES DEPARTMENT, SAMASTIPUR.
6. THE EXECUTIVE ENGINEER, FLOOD CONTROL DIVISION-1, KHAGARIA.
7. THE EXECUTIVE ENGINEER, FLOOD CONTROL DIVISION, BARAUNI CAMP, BEGUSARAI, DISTRICT-BEGUSARAI.
8. THE SUB-DIVISIONAL OFFICER, FLOOD CONTROL AND WATERWAYS SUB-DIVISION, MAJHAUL CAMP BEGUSARAI, DISTRICT-BEGUSARAI.

.... PETITIONER/S

VERSUS

BRIGADIER RAMNANDAN PRASAD SINGH, SON OF LATE CHANDRA MANI PRASAD SINGH, RESIDENT OF VILLAGE-BABHANGAMA, P.O.-PAHSARA BABHANGAMA, P.S.-NOWKOTHI VIA MAJHAUL, DISTRICT-

BEGUSARAI AT PRESENT RESIDENT AT HOUSE NO.9, SECTOR 23,
GURGOAN, HARAYANA

.... OPPOSITE PARTY/S

Appearance :

(In MJC No.5679 of 2011)

For the Petitioner/s : Mr. BINOD KUMAR SINGH, ADV.

For the State : Mr. LALIT KISHOR PAAG-I

(In C. REV. No.133 of 2011)

For the Petitioner/s : Mr. RABINDRA KUMAR PRIYADARSH, Adv.

For the Respondent/s : Mr. BINOD KUMAR SINGH, ADV

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 04-10-2016

For non-compliance of order dated 29.10.2012 passed in CWJC No.13122 of 2010 while MJC No.5679 of 2011 has been filed on behalf of petitioner for taking action against the opposite parties under contempt of Court Act, Civil Review No.133 of 2011 has been filed on behalf of State/Opposite Party for review of the order dated 29.10.2012 passed in CWJC No.13122 of 2010. Both the petitions have been directed to run conjointly and further, the Bench was of the view that both the petition should be heard analogously and be decided by a common order over which there happens to be an objection at the end of State to the effect that firstly review be heard and decided. Because of the fact that the result of review will guide the ultimate fate of MJC, therefore, review petition should be heard on priority basis and be decided independently which also got nod at the end of learned counsel for the opposite party and that being so, civil review has been heard independently and is being decided, accordingly. Keeping MJC No.5679/2011 out of kiddle directing the office to list under proper heading.

2. In order to properly appreciate the submissions having been raised on behalf of rival parties, first of all factual

matrix is to be considered.

Rosara Parihara Embankment was constructed over river Budhi Gandak at village-Pahsara without acquiring the land in accordance with Land Acquisition Act, in the year 1989 and on account thereof, no compensation was paid to the concerned Raiyats. The aforesaid fact was brought to the notice of the Bench at the instance of the petitioner/OP under CWJC No.1654 of 1997 and the same was decided vide order dated 12.10.1998. (The nature of the order will be discussed at subsequent paras). As, the order dated 12.10.1998 was not complied with consequent thereupon, CWJC No.13122/2010 has been filed at the instance of same petitioner/OP with a prayer to direct the opposite parties/State and its official/petitioner to comply the order dated 23.04.1998 along with other ancillary direction which, vide order dated 29.10.2010 has been allowed. During course thereof, Rs.50,000/- was awarded as cost on account of laches on the part of the opposite party/state and its official/petitioner in getting the order dated 12.10.1998 complied with.

Subsequently thereof, at one end MJC No.5679/2011 has been drawn up on behalf of petitioner for taking action against the opposite parties/petitioner under Contempt of Court Act on account of non-compliance of the order on the other hand, review has been filed on behalf of opposite party/petitioner concerning order dated 29.10.2010 passed in CWJC No.13122/2010.

3. After perusal of para-1 of the review petition, it is evident that same has been confined for reviewing the relevant portion of the order dated 29.10.2010 passed in CWJC No.13122/2010 whereunder exemplary cost of Rs.50,000/- has

been awarded but, after going through the petition, it is evident that the order impugned in its entirety has been sought for to be reviewed. In course of argument, The learned PAAG-I has argued on both score.

4. During course of substantiating his plea, the learned PAAG-I has submitted that petitioner while filing writ petition, should come with clean hand. In case, the writ is found malafide suppressing the facts, then in that event, not only it is bound to be dismissed rather petitioner is liable for exemplary cost. So, instead of State, cost would have been awarded against the petitioner because of the fact that CWJC No.13122/2010 was filed on behalf of petitioner/OPs on false, wrong, incorrect statement as well as by concealing the real fact.

5. To substantiate such plea, it has been submitted that three survey plot nos. bearing Khesra No.151, 152, 164 were found to be properly identified whereupon embankment was constructed and for that, in terms of order dated 12.10.1998 passed in CWJC No.1654/1997, compensation had already been paid after initiating land acquisition proceeding bearing 1/1998 much before filing of CWJC No.13122/2010 and further, the same had already been received by the petitioner before institution of aforesaid CWJC. Even then, incorporated wrong fact in the petition that there was deficiency at the end of the opposite party /State in complying with the order dated 12.10.1998 passed under CWJC No.1654 of 1997 and for that, drew attention towards relevant annexures through which receipt of compensation at the end of OP/petitioner including others are visible.

6. Furthermore, it has also been submitted that with



regard to remaining lands bearing Plot No.157, 162, right from CWJC No.1654/1997, it has been pleaded by way of counter affidavit that aforesaid lands were submerged since before construction of embankment and so, by way of construction of embankment its nature has not been changed, and so, State could not be held responsible for the same on account of construction of embankment. As the State has nothing to do nor intends to do anything over the aforesaid survey plots therefore, have been kept out of purview of acquisition. Petitioner is not at all competent enough to coerce the State to acquire those lands which had gone into the bed of the river since before construction of embankment and for that, State is not responsible.

7. Because of the fact that the aforesaid vital clue were withheld by the petitioner who intentionally, dishonestly left out to recite aforesaid legal, factual steps having been taken at the end of State machinery in compliance of order dated 12.10.1998 passed in CWJC No.1654/2007. They have also withheld to incorporate initiation of L.A. Case No.01/1998-99, payment of compensation amount under their receipt. Had there been such disclosure no order dated 29.10.2010 in connection with CWJC No.13122/2010, the order impugned, would have been passed.

8. In likewise manner, it has also been submitted that although there was no slackness nor disobedience at the end of the petitioner/opposite party in complying with the order dated 12.10.1998 passed in CWJC No.1654/1997 but on account of concealment of proper and real fact by the petitioner as well as by way of putting an allegation that there happens to be non-compliance, exemplary cost of Rs.50,000/- has been slapped



against the opposite party/petitioner. In the facts and circumstances of the case, as stated above and further, considering unscrupulous conduct of the petitioner of the CWJC No.13122/2010, /opposite party not only the cost rather the order dated 29.10.2010 passed in CWJC No.13122/2010 in its entirety is fit to be reviewed. To substantiate such plea, learned PAAG-I has referred (2008) 12 SCC 481, 2015 (4) PLJR 328.

9. Learned counsel for the opposite party, refuting the submissions having been made on behalf of petitioner, has submitted that the petition of review should not be treated as well as adjudicated upon like original court nor as an appellate court. That means to say re-adjudication on material aspect is forbidden. Unless and until there happens to be glaring defect apparent on the face of the judgment, the review is non-permissible. From the order impugned, it is apparent that no such infirmities are found. That being so, the petition of review is found non-maintainable.

10. Furthermore, it has also been submitted at the end of learned counsel for the opposite party that though in specific term the part compliance of the order passed in CWJC No.1654/1997 has not been disclosed under CWJC No.13122/2010 but different annexures were available along with the petition wherefrom part compliance was very much exposed. Copy of those annexures were made available to the adversary whereupon it could not be said that petitioner intentionally as well as purposely withheld the information and further, failed to incorporate in the petition. Petition should not be considered in isolation with the annexures having tagged therewith to substantiate the same. That being so, petitioners have got no ground to ask for review of the order

impugned in the background of the fact that the same has been passed after going through the pleadings along with annexures of the respective parties. Apart from this, it has also been pleaded that compensation, not for acquisition only is payable, rather is to be paid for its impact affecting the right/enjoyment of property held by an owner. And that happens to be reason behind passing of order dated 12.10.1998 in C.W.J.C. No.1654/1997.

11. Ambit and scope of review petition is the first point to be adjudicated upon.

12. In ***Meera Bhanja v. Nirmala Kumari Choudhury*** reported in **(1995) 1 SCC 170**, it has been held:

“8. It is well settled 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* (1979) 4 SCC 389, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

“It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* AIR 1973 SC 1909, 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 or 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.”

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has



clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* AIR 1960 SC 137 wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record: 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. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

13. In *Parsion Devi v. Sumitri Devi* reported in (1997) 8 SCC 715, it has been held:

“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”.

14. In *Lily Thomas and Others vs. Union of India and Others*, reported in (2000) 6 SCC 224, it has been held:

“52. The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand

in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in *S. Nagaraj v. State of Karnataka* held (SCC pp.619-20 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. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* that an order made by the Court was final and could not be altered:

“.... Nevertheless, if by misprision in embodying the judgment, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.”

Basis for exercise of the power was stated in the same decision as under:

“It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.”

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the

substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualize the efficacy of such provisions expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And Clause © of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been famed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, „for any other sufficient reason“ in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice”.

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

53. This Court in Northern India Caterers (India) Ltd V. Lt. Governor of Delhi considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order XL Rule 1 of the Supreme Court Rules and held: (SCC pp.171-72 para 8) “8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so; Sajjan Singh v. State of Rajasthan, SCR at p.948. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: Girdhari Lal Gupta v. D.H. Mehta, SCR at p.760. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: O.N. Mohindroo v. Distt. Judge, Delhi, SCR at p.27. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceedings, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order XL Rule 1, Supreme Court Rules, 1966).

But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except „where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility”: Sow Chandra Kante v. Sk Habib”.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.”

15. In the case of *Kamlesh Verma vs. Mayawati &*

Others, reported in ***AIR 2013 SC 3301***, it has been observed:

“16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the fact of the record;

(iii) Any other sufficient reason.

The words “ any other sufficient reason” has been interpreted in Chhajju Ram v. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulse Athanasius & Ors., (1955) 1 SCR 520: (AIR 1954 SC 526), to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275: (2013) AIR SCW 2905).

(B) When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) 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.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

Thus, gist of principle as emanate from judicial pronouncement as referred above that the scope of review is limited and is exercisable only in case there happens to be glaring defect perceivable, on cursory perusal of the order, as well as on any new fact which, even on due diligence could not be brought up at an earlier occasion apart from preventing miscarriage of justice.

16. In CWJC No.1654/1997, the writ court passed the following operative order:

“On the facts and circumstances, both the parties (petitioner and the State of Bihar), in presence of Secretaries aforesaid have agreed for the following order:

(i) The respondent-State will acquire the land in question i.e. lands/plots of petitioner over which embankment has already been constructed as well as the land of the petitioner which has gone in the river bed or submerged because of construction of such embankment rendering the same not capable for agricultural purpose.

(ii) The land acquisition proceeding will be initiated and will be completed within a period of six months.

(iii) The compensation amount together with statutory interest, if any, on preparation of award will be paid in favour of petitioner within a period of nine months.

In view of fact that the respondents have already constructed an embankment over three plots of the petitioner as admitted in the supplementary counter affidavit, they will pay additional compensation in favour of the petitioner to the extent of Rs.10,000 (ten

thousand) within a period of nine months aforesaid which will be in addition to the compensation and statutory interest, if any, as stated above.

The writ petition stands disposed of in terms with the aforesaid agreed order.”



17. Because of the fact that pleadings of CWJC No.1654/1997 is not available on account of its destruction, from para-6 of the petition of CWJC No.13122 of 2010 the relevant survey plots have been enumerated as Plot Nos.151,152,154,162,164,165 with respective areas as well as boundaries over which, either construction of embankment was effected or the same had gone in the bed of river on account of construction of the aforesaid embankment. The aforesaid petition contains the order dated 12.10.1998 passed in CWJC No.1654/1997 as Annexure-1, representation filed by petitioner before District Magistrate, Begusarai, Annexure-2 letter no.1026 dated 07.07.2008 sent by Executive Engineer, Flood Control Division, Begusarai to the petitioner Annexure-3. After perusal of Annexure-2 paragraph-3, it is evident that petitioner had already incorporated the fact that Rs.70,000/- has been paid to him with regard to the land over which embankment was made. However, the grievance was there still persisting with regard to remaining land having gone to the bed of river on account of construction of embankment.

18. Counter affidavit was filed on behalf of respondent nos.3 and 4 in the aforesaid C.W.J.C. No.13122/2010 wherein it has been incorporated that lands have been acquired after initiation of Land Acquisition Proceeding No.01/1998-99. Furthermore, at para-6 thereof, it has been admitted that in the year 1989-90 the land was acquired for construction of Rosara-

Parihara Embankment over Bhudhi Gandak in village-Pahsara but the said acquisition was subject to Land Acquisition Proceeding No.01/1998-99 and further 80% of solatium amount had already been paid. The same version has been reiterated in para-7 of the counter affidavit. However, it has also been disclosed that process for acquisition of the land having gone under the bed of the river is in progress and further, compensation thereof will be paid to the petitioner.

19. For better appreciation, the relevant passage is quoted below:

“So far the land which had gone under the bed of the river is concerned the process for acquisition of the same is in progress and the compensation will be paid to the petitioner as soon as the allotment received. The correspondences are going on with the Executive Engineer, Flood Control Division, Begusarai, respondent no.7.

True copies of letter dated 09.05.05 letter No.293, letter dated 05.08.2010 and letter dated 22.09.2010 are annexed herewith and marked as Annexure-B,C,D and E respectively to the counter affidavit.”

20. In para-8 it has also been submitted that at an earlier occasion having not found the remaining area appropriate for their utility but, having been so directed under order dated 12.10.1998, the process for acquisition of aforesaid land have been taken up and for that, Land Acquisition Case No.09/1999-2000 was initiated but the same lapsed due to delay. However, fresh demand for money to be paid in lieu of compensation has been made. In



para-9 there happens to be an admission on the part of the respondent that due to construction of Rosara-Parihara Embankment certain lands of the petitioner as mentioned in para-6 of the petition had gone in the bed of the river whereupon CWJC No.1654/1997 was filed and as per direction, the acquisition process is going on. Furthermore, it has also been submitted that as they themselves are curious to make payment of compensation in its entirety, hence prayed for dismissal of the writ. It is also evident therefrom that no counter affidavit having been filed at the end of the respondent in CWJC No.1654/1997 was ever annexed.

21. As stated above, from the petition having been filed by the petitioner/respondent to review the order passed in CWJC No.13122 of 2010, the counter affidavit filed on their behalf in CWJC No.1654/1997 has been annexed wherefrom it is evident that the petitioner/OP had objected to that extent. But the aforesaid event is to be taken up in the background of subsequent event, that means to say having consent order passed in CWJC No.1654/1997, when under, an exercise was to be initiated at the end of petitioner/O.P. to identify whether due to their activities the remaining lands have gone into bed of the river which, as is evident, not been followed. Moreover, as per counter affidavit filed under CWJC No.13122/2010, it is evident that they have initiated acquisition proceeding with regard to remaining lands and further, for the payment of solatium, taken proper steps. It has also been incorporated that aforesaid exercise has taken place in light of order passed in CWJC No.1654/1997. Furthermore, it is evident from the counter affidavit that 80% of the solatium relating to lands having acquired under L.A. Case No.01/1998-99 has been



paid, while from annexure-2, it has been disclosed that Rs.70,000/- has been paid. In none of the paragraphs, petitioner/OP had disclosed the total compensation amount having been identified against acquisition of the land under L.A. No.01/1998-99 has been paid, and, if not then the expected time whereunder remaining amount was going to be paid. No cogent reason has also been assigned for non-payment of the total identified amount. Therefore, remaining 20% amount, according to their own admission is being retained by them without any legal sanctity.

22. It is evident from the file of CWJC No.1654/1997 and further, it happens to be an admission at the end of the petitioner/respondent that for the purpose of construction of embankment over the land was already completed in the year 1989-90. CWJC No.1654/1997 was filed on 19.02.1997. Because of the fact that the officials having posted in the year 1989-90 were not at all continuing in the year 1997, on account thereof, vide order dated 16.09.1998 in CWJC No.1654/1997 a direction was given to the Executive Division, Department of Flood Control Division, Begusarai to make spot inspection of lands in question and to file a supplementary counter affidavit enclosing therewith his report giving details of embankment having been constructed over the land in question. He was also directed to make it clear that whether on account of construction of embankment, the land of the petitioner had gone in the bed of river or not and as, the same was not clarified according to desirability then the consent order was passed on 12.10.1998, as incorporated above directing to reassume the obligation and on account thereof,



petitioner/respondent was not at all competent enough to skip therefrom, whereunder apart from payment of compensation, an additional burden was given upon the petitioners/O.P. to find out whether on account of construction of embankment, the remaining land had gone in the bed of river, and if so, then compensation with regard thereto was also payable. As is evident, no exercise was done, at the other hand due steps have been taken for payment of compensation, relating to those lands also.

23. On account of consent order having passed relating to CWJC No.1654/1997, the contents of the counter affidavit having been filed in CWJC No.1654/1997 got no relevance and that happens to be reason behind that while filing counter affidavit in CWJC No.13122 of 2010, it was fairly stated under para-8 that as per order dated 12.10.1998 the respondents have become ready to acquire those lands also for which process was going on. That being so, the process would have met with ultimate logical conclusion. Furthermore, as per para-6 of the counter affidavit it is an admission that only 80% of the amount has been paid to the petitioner relating to Land Acquisition Proceeding No.01/1998-99 which also would have been properly complied with. All the annexures which have been filed along with the petition of review as well as by supplementary affidavit happen to be much prior to the aforesaid counter affidavit having been filed in CWJC No.13122/2010 and so, before filing of counter affidavit, petitioners/respondent was within its full knowledge regarding further development having taken place in pursuance of order passed in CWJC No.1654/1997, as well as non-payment of 20% amount concerning the three plots for which L.A. Case No.1/1998

was initiated and for which, no time has been disclosed with regard to payment thereof. Furthermore, the approach of petitioner suggest that, the present review petition, if taken in its entirety, clearly suggest that the same happens to be not for the purpose of reviewing order passed under CWJC No.13122 of 2010, rather impliedly, relating to review of consent order passed under CWJC No.1654/1997. Virtually petitioner/O.Ps. want to kill two birds with one stone, which should not be patronized. Moreover, no cogent material is found subsisting on record to justify prayer of the petitioner/O.Ps.

24. That being so, the instant review petition is found non-maintainable and is accordingly rejected.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	05.09.2016
Uploading Date	04.10.2016
Transmission Date	N.A.