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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RA-CW-186-2014 (O&M) IN
CWP-3792-1980
Date of decision : 19.05.2017

Deva Singh (deceased through LRs) and others

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rahul Sharma, Advocate
for the applicant(s)/respondent(s).

Mr. Madan Pal, Advocate
for the non-applicant/petitioner Nos.11(i) and (ii).

Mr. B.S. Bedi, Advocate
for the non-applicant/petitioner Nos.1(i) to (iii), 2 (i) & (ii),
3 (i) to (v), 4, 6, 9, 10(i) to (iii) & 12 (i) & (ii), 5(ii)(a)(b).

Mr. Karan Nehra, Advocate
for respondent Nos.5 to 7.

AMIT RAWAL, J. (ORAL)

The review applicants are seeking the review of the order dated 18.12.1996 on the premise that the fallout of the writ petition is seriously affected the applicants, who were the allottees of the part of the land, in question and acquired the knowledge of the same. only in January 2014 when they received the notice of the application (Annexure A-7), moved by the non-applicant/petitioner in the writ petition before the prescribed authority for implementation of the order of this Court. The factum of allotment and its utilisation is not denied in the reply filed by the State of Haryana, in view of the averments made in the reply on behalf of the State

i.e. paragraph 4 of the preliminary objections and 16 of the merits, reads thus:-

"4. That further from record available in the Agrarian Branch, also reveals that from this surplus land of Smt. Nimbo, an area to the tune of 184K-17M was also further allotted to the 11 old tenants/landless tenants during the period from 1962-63 and even the possession was also delivered to these allottees, vide the separate rapat rojnamchas of the year 1962, 1963, 1964 and these allottees were also duly issued their separate allotment letters on form K-6, and after the enactment of the Haryana Ceiling Act of 1972, the separate US-3 Forms were also issued to these allottees, with a report that possession is already with these allottees.

16. That para no.16 of the application is legal, needs no reply. However, it is not denied that surplus area with Smt. Nimbo was declared on dated 13.07.1960 and out of the same land measuring 184K-17M stood utilized to 11 old tenants/allottees in the year 1962-64 i.e. much before the death of Smt. Nimbo big landowners, who died on 6.1.1968."

Mr. B.S. Bedi, learned counsel appearing on behalf of the non-applicants/petitioners in the writ petition by raising preliminary objection submits that the application for review, in the absence of any prayer for condonation of delay, is not maintainable. No explanation has come forth for seeking condonation of delay, much less, acquisition of knowledge. As regards the scope of review, he submits that it is very limited. It is only a clerical error or an error apparent on record, which has to be pointed out, which the applicants have not been able to point out and in this regard, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in

“Smt. Meera Bhanja V/s Smt. Nirmala Kumari Choudury” 1995 AIR (SC) 455, “State of Haryana V/s Mohinder Singh and others” 2003 (2) RCR (Civil) 642, and ratio decidendi culled out by the Allahabad High Court rendered in “Sri Ram V/s Deputy Director of Consolidation, Basti and another” 2010 (4) ADJ 53.

He submits that the aforementioned ingredients have not been complied with, therefore, review application is liable to be dismissed with exemplary cost.

He further submits that as regards respondent Nos.5 to 9 in the writ petition, an LPA was preferred and during the pendency of the appeal, the matter was compromised and the appeal was withdrawn. This is also endorsed by Mr. Madan Pal, learned counsel representing the petitioner Nos.11(1) and (ii).

In reply, Mr. Rahul Sharma, learned counsel appearing on behalf of the applicant(s)/respondent(s) submits that the limitation would have definitely come in the way of the review applicants, had the applicant(s)/respondent(s) been a party. In the absence of the same, they acquired the knowledge only in December 2013 and application has been filed on 01.04.2014, therefore, cannot be said to be belated or barred by law of limitation. Even otherwise, in the proceeding of writ, the limitation does not apply.

As regards the dismissal of the LPA, much less, compromise having been effected between respondent Nos.5 to 9 and non-applicants/petitioners, there is a categorical averment in the review application, thus, there is no concealment, thus, urges this Court for

recalling the order, under challenge, on the submissions noticed above.

I have heard the leaned counsel for the parties and appraised the paper book, much less, case law cited at bar.

There is no dispute to the *ratio decidendi* culled out in the judgments cited by Mr. Bedi, however, a Larger Bench of Hon'ble Supreme Court as constituted under Article 145 (5) of the Constitution of India, in **"Shivdeo Singh and another V/s State of Punjab and others" 1963 AIR (SC) 1909**, while dealing with the identical situation, where the affected party sought the review of the order and not impleaded as a party, the Single Bench of this Court had accepted the review application and matter reached the aforementioned Bench and having referred to the Larger Bench, upheld the findings of the Single Bench of this Court. For the sake of brevity, the relevant findings rendered in paragraph 8 of the judgment cited supra read as under:-

"8. The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel contends that Art. 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a 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. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla' J. entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no. right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is

precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J.

9. We, therefore, dismiss this appeal with costs."

The present case is also of the identical nature, where the review applicants were not party in the aforementioned proceedings, I would refrain myself from delving upon the merits and demerits of the matter as it would seriously prejudice the right of the non-applicant/petitioners, but the fact remains that the review applicants acquired the knowledge of the application at the instance of the non-applicant/petitioners, having moved 17 years after of passing of the order by this Court, to the prescribed authority in December 2013 and notice was issued to the review applicants in January 2014. No explanation has come forth as to why the aforementioned proceedings, which were in the knowledge of the petitioner, to be allottees as accepted and noticed in the reply filed by the State of Haryana, were not impleaded in the writ petition and the application for review is dated 01.04.2014, thus, there was no such delay, in essence, review applicants moved an application with promptitude. The scope of review under Order 47 Rule 1 CPC cannot though always confined to the error apparent on record or a clerical error, but in order to substantiate the justice, this is what the Single Bench of this Court, while dealing with the review application, which came to be pondered upon in the judgment referred supra, was discussed and upheld. I am also of the view that injustice and as well as miscarriage to justice has been caused to the review applicants, regarding non-addressal of their points before this Court

seized the matter with regard to the order, under challenge, whereby the non-applicants/petitioners had sought the exemption of the land being declared surplus, thus, objections of Mr. B.S. Bedi, with regard to the limitation, is repelled. I am of the view of the that order 18.12.1996 passed by this Court is liable to be recalled and writ petition to be restored to its original number for adjudication.

Resultantly, the order dated 18.12.1996 is hereby recalled and writ petition is ordered to be restored to its original number.

Application bearing No.4195 of 2014, under Order 1 Rule 10 of CPC read with Section 151 CPC for impleadment of the applicants as respondent Nos.11 to 66, is also allowed and the the applicants/review petitioners are allowed to be impleaded as respondent Nos.11 to 66.

Reply be filed on their behalf with an advance copy to the counsel opposite.

It is made clear that respondent Nos.5 to 9 in the writ petition would not get the benefit of the this order as they have already compromised the matter with the non-applicants/petitioners.

The review application stands allowed.

The Registry is directed to list the writ petition for some actual date.

19.05.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No