IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST) NO. 19872 OF 2018
IN
WRIT PETITION NO. 7179 OF 2017

Bhupendra R. Gupta & Anr. ….. Petitioners

VERSUS

Smt.Sakhubai S. Ghatal & Ors. ….. Respondents

Mr.A.J.Almeida for the Petitioners.

Mr.P.S.Dani, Senior Advocate, i/b. Mr.Abhijit Kadam for the Respondent nos. 1 to 4.

Mr.S.D.Rayrikar, A.G.P. for the State - Respondent nos. 5 to 8.

CORAM : R.D. DHANUKA, J.

DATE : 18th JULY, 2018

P.C.

By this review petition the review petitioners seek recall of the order and judgment dated 12th June, 2018 passed by this court dismissing the Writ Petition No.7179 of 2017 filed by the review petitioners. In the review petition, the petitioners had impugned the order dated 14th June, 2017 passed by the respondent no.7.

2. Mr.Almeida, learned counsel for the review petitioner invited my attention to some of the findings rendered by this court in the order and judgment dated 12th June, 2018 and also relied upon the Ex.D i.e. an application dated 9th June, 2005 filed by the contesting respondents before the Sub-Divisional Officer. He submits that the said application

was filed by the contesting respondents under section 242 of the Maharashtra Land Revenue Code, 1966 read with section 10A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. He submits that sections 36 and 36A of the Maharashtra Land Revenue Code were not attracted to the facts of this case at all. Learned counsel who had argued this matter on behalf of the review petitioners in the writ petition had advanced wrong arguments before this court.

3. It is submitted that the learned Sub-Divisional Officer could not have thus set aside the consent decree and the agreement by exercising the so called power under section 36 and 36A of the Maharashtra Land Revenue Code. Learned counsel placed reliance on the judgment of the Supreme Court in case of ***Bank of Bihar vs. Mahabir Lal and others, AIR 1964 SC 377*** and more particularly paragraph (5).

4. Mr.Dani, learned senior counsel for the respondent nos. 1 to 4 on the other hand opposes the maintainability of this review petition on the ground that the grounds raised by the review petitioners are by way of challenge to the order on merits which cannot be permitted under Order 47 Rule 1 of the Code of Civil Procedure, 1908. He submits that whatever arguments were advanced by the learned counsel for the review petitioners in the writ petition, the learned counsel now seeks to argue contrary to those arguments which were advanced before this court. Learned senior counsel also invited my attention to some of the grounds raised in the review petition and more particularly the ground (k) that Revenue Minster ought to have held and seen that in fact the

proper jurisdiction for the respondents to file the application before the Collector, Mumbai under sections 36 and 36A of the Maharashtra Land Revenue Code, 1966 but in the present case the respondents have filed the original application under section 242 and section 10A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

5. It is submitted by the learned senior counsel that merely because there is change of advocate, the new advocate cannot be allowed to argue contrary to the arguments advanced before this court by the earlier advocate. He submits that the scope of powers of court under Order 47 Rule 1 are very limited. It is submitted that each and every argument advanced by the learned counsel for the review petitioners is contrary to the principles of law laid down by the Supreme Court in case of ***Kamlesh Verma vs. Mayawati and others (2013) 8 SCC 320***.

6. Learned senior counsel also placed reliance on the judgment of Supreme Court in case of ***Tamil Nadu Electricity Board and another vs. N. Raju Reddiar and another, (1997) 9 SCC 736*** and more particularly in support of the submission that by changing the advocate, the party cannot be allowed to re-argue the entire matter on merits which were specifically rejected by this court.

7. A perusal of the grounds raised in the petition filed by the petitioners indicates that it was the case of the petitioners themselves that the proper jurisdiction for the respondents was to file an application under sections 36 and 36A of the Maharashtra Land

Revenue Code. Learned counsel for the petitioners who had argued the matter before this court had also urged repeatedly before this court that the learned Sub-Divisional Officer did not mention sections 36 and 36A of the Maharashtra Land Revenue Code and thus the proceedings before the learned Sub-Divisional Officer were without jurisdiction. This arguments of the learned counsel for the petitioners was dealt with by this court at length in paragraphs 11 and 14 of the order and judgment of this court dated 12th June, 2018 and the same has been rejected. This court held that the findings of fact rendered by the learned Sub-Divisional Officer were rendered exercising powers under sections 36 and 36A of the Maharashtra Land Revenue Code, 1966. The petitioners themselves had invoked the provisions of the Maharashtra Land Revenue Code, 1966 while filing subsequent proceedings filed before the authority which were admittedly impugning the orders under sections 36 and 36A of the Maharashtra Land Revenue Code, 1966. This court cannot allow the review petitioners to argue something contrary to what was argued in the writ petition filed by the petitioners which arguments are rejected by this court in the order and judgment dated 12th June, 2018.

8. The other ground raised in the review petition clearly indicates that the review petitioners seek to argue the whole thing again on merits which arguments are rejected by this court in the said order and judgment.

9. Supreme Court in case of ***Kamlesh Verma*** (supra) has laid down

the guidelines for entertaining the review petition under order 47 Rule 1 of the Code of Civil Procedure, 1908.

The principles relating to review jurisdiction are summarized by the Supreme Court as follows :

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 face of the record;

(iii) Any other sufficient reason.

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 reheard 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 not 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 negatived.

10. In my view, the present review petition is contrary to each and every principles of law laid down by the Supreme Court and no error apparent on the face of the record could be brought to the notice of this court in the said order and judgment by the learned counsel for the review petitioners. The principles of law laid down by the Supreme Court squarely applies to the facts of this case.

11. Supreme Court in case of ***Tamil Nadu Electricity Board and another*** (supra) has deprecated the practice of changing the advocate for the purpose of filing review petition. A perusal of the record indicates that in this matter also, the learned counsel for the review petitioners has sought to urge what was contrary to what was argued by the erstwhile advocate before this court alleging that arguments advanced by earlier arguments were wrong. This court cannot allow such practice of changing advocate for the purpose of filing review petition and to argue something contrary to the whatever argued by the earlier advocate.

12. Insofar as judgment of Supreme Court in case of ***Bank of Bihar*** (supra) relied upon by the learned counsel for the review petitioners is concerned, it is held by the Supreme Court that a particular thing happened or did not happen before it, it ought not ordinarily to be permitted to be challenged by a party unless of course both the parties to the litigation agree that the statement is wrong, or the court itself admits that the statement is erroneous. In this matter, it is not the case of both the parties that any erroneous statement came to be recorded by this court in the said judgment. The judgment relied upon by the learned counsel for the review petitioners is totally misplaced and does not assist the case of the review petitioners.

13. The review petition is accordingly dismissed with exemplary cost of Rs.50,000/- which shall be paid by the review petitioners to the respondent nos. 1 to 4 within one week from today.

14. When this court dismissed the earlier writ petition filed by the petitioners, the learned counsel appearing for the petitioners had applied for continuation of the *ad-interim* protection granted by this court on 30th June, 2017. This court had accepted the said request of the learned counsel and had continued the *ad-interim* protection granted by this court. Instead of challenging the said order before the Hon'ble Supreme Court, the petitioners have chosen to file this frivolous review petition before this court.

15. Application for continuation of the *ad-interim* protection granted by this court is thus rejected.

[R.D. DHANUKA, J.]