

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.541 of 2018

In

Civil Writ Jurisdiction Case No.14449 of 2014

=====

Kumar Gaurav, S/o Sree Mahendra Pratap Singh, R/o Village Parasia, P.S.
and P.O. Chand, District- Kaimur, Bihar.

..... Petitioner

Versus

1. The State of Bihar.
2. The Divisional Commission, Patna Division.
3. The Collector-cum-District Magistrate, Kaimur, Bhabua.
4. The Addl. Collector, Bhabua.
5. The Sub Divisional Magistrate, Bhabua.
6. The Circle Officer, Anchal Chand, District Kaimur at Bhabua.
7. Ashok Kumar, S/o Sri Shyamnandan Rai, R/o Village Rampur Shyam
Chand, P.S. Raghapur, District- Vaishali.

..... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Shyam Narayan Pandey

For the Opposite Party/s : Mrs. Nutan Sahay, A.C. to AAG-12

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 13-02-2019

Heard learned counsel for the petitioner and learned
counsel for the State.

2. By the present application preferred under Order 47,
Rule 1 of the Code of Civil Procedure (for short 'CPC'), the
petitioner seeks review of the order of the Division Bench dated
06.04.2015 passed in CWJC No. 14449 of 2014 by which the writ



petition was disposed of directing the respondents to ensure that the public way running through the land in Khata No. 20, Khesra No. 36 of Mouza Baghi, District Kaimur, measuring 1.26 decimals, is not obstructed either by the persons in whose favour the settlement is made or by others.

3. The brief facts of the case are as under :-

- (a) The petitioner of CWJC No. 14449 of 2014, namely, Ashok Kumar had filed the writ petition before this Court as a public interest litigation for a direction to the respondents not to settle the recorded Gair Mazaura Aam used by the villagers and public at large ad measuring 1.26 decimals of Khata No. 20, Khesra No. 36 in Mouza Bhaghi, Anchal Chand, District- Kaimur at Bhabua and for a direction to remove the encroachment over the road constructed on the land of Khata No. 20, Khesra No. 36, ad measuring 26 decimals.
- (b) The contention of the petitioner in the writ petition was that on the land there is a road constructed by the government fund. The road goes through village Baghi to village Bahadura and from there it goes to village Chand, which is used by public at large. However, some anti-social elements of the locality had encroached some portion of the road and



the land for their personal use. The people of the area gave several representations before the District Magistrate, Bhabua for removal of encroachment as also for not settling the land in question to any other person. However, after approval of Patna Divisional Commissioner, the Circle Officer, Chand settled the land adjacent to the road to *Mahadalits*. The said settlement made in favour of the *Mahadalits* would not only cause hindrance on the road but would also affect the agriculturists of the locality.

- (c) The State filed its counter affidavit duly sworn by the Circle Officer, Chand, in which it was categorically stated that the revisional survey khatian for the land of R.S. Plot No.36 for area 1.20 acres in R.S. Khata No. 36 situated in village Baghi, Thana No. 65, Anchal Chand in the District of Kaimur has been prepared in the name of *Anabad Sarva Sadharan*. A passage existed in the middle of the land of plot no. 36. In order to provide site for poor persons belonging to the category of *Mahadalit (Chamar)* a settlement proceeding being Settlement Case No. 2 of 2012-13 was initiated by the Circle Officer, Chand in the name of 22 persons of the said category for making settlement of 44 decimals of land with them for residential purpose under



‘Grih Asthal Yojna’ out of plot no. 36 under Khata No. 20 situated in village Baghi, Thana No. 65, Anchal Chand, District- Kaimur. After *Aam Ishtehar* and after proper inquiry and measurement, a proposal was sent for settlement of land to the D.C.L.R., Bhabua keeping and maintaining the passage intact existing in the land of plot no.36. The D.C.L.R., Bhabua with his recommendation sent the proposal to the S.D.O., Bhabua, who also with his recommendation, sent the same to the Additional Collector, Kaimur. The Additional Collector, Kaimur also with his recommendation sent the same to the Divisional Commissioner, Patna Division, Patna for approval. The Divisional Commissioner, Patna Division approved the proposal of settlement by his order dated 24.10.2013.

- (d) On receipt of the approval of the Commissioner, red cards were granted to the settlees individually and Register-II was also prepared in their names for their respective land settled with them. Thus, the land in question has been settled with needy persons by the competent authority after following procedure and in the manner prescribed. The settlement of land in question does not cause inconvenience to the community. The passage existing in plot no.36 has been also



neither affected nor narrowed by the settlement of the land in question. The settlement in question has also not caused obstruction in the free movement of the public and their vehicles through the passage existing in plot no.36.

- (e) It was further stated that it is not correct to say that the petitioner is a social activist. The land of plot no. 65 situated adjacent south to the settled land belongs to the petitioner and his family members and they had greedy eyes over the same and the settlement of the land in question has caused hindrance to unauthorized occupation by them over the same.

4. No rejoinder to the counter affidavit filed on behalf of the State was filed by the petitioner of the writ petition.

5. After hearing the parties, the Division Bench disposed of the writ petition observing as under :-

“The petitioner wanted that the land in its entirety is not settled or allotted to any one. The fact, however, remains that in the year 2013 itself, an extent of 44 decimals was settled in favour of the needy persons belonging to Maha Dalit community. The respondents have categorically stated that the public road passing through the land is not at all affected.

Once the settlement is already done, we cannot cancel the same. Therefore, we dispose of the writ



petition directing that the respondents shall ensure that the public way which is running through the land in Khata No. 20, Khesra No. 36 of Mouza Baghi, Kaimur District, measuring 1 acre and 26 decimals, is not obstructed either by the persons in whose favour the settlement is made, or by others.”

6. Learned counsel appearing for the petitioner submitted that the petitioner is also a resident of the same locality. The observations made by this Court that “once the settlement is already done, we cannot cancel the same” is causing lot of problem to the residents of the locality. He contended that once it was established that the road existed over plot no. 36 this Court ought to have allowed both the prayers made in the writ petition and a direction ought to have been issued to remove the encroachment made by the illegal settlees of the land. He has tried to impress upon us that the settlement of land made in favour of 22 *Mahadalits* was an illegal exercise of power by the respondent authorities. He, thus, wants that this Court, in exercise of its power of review, should issue a direction to the respondent authorities to remove the encroachments made adjacent to the road in question by the 22 settlees of the land.



7. Having heard learned counsel for the petitioner, we are of the considered opinion that the review petition is totally misconceived.

8. It is a well settled position in law that a review proceeding cannot be equated with the original hearing of the case. A party is not entitled to seek review of a judgment merely for the purpose of rehearing and fresh decision of the case. Review of an earlier order cannot be done unless the Court is satisfied that the material error manifest on the face of the order undermines its soundness and results in miscarriage of justice. A review proceeding has to be strictly confined to the ambit and scope of Order 47, Rule 1 of the CPC. The petitioner has failed to bring to our notice any error apparent on the face of the record warranting review of the order dated 06.04.2015 passed in CWJC No. 14449 of 2014. A perusal of the review application itself would make it evident that the same is nothing but an appeal in disguise.

9. Thus, we are of the opinion that in the application under consideration, the petitioner has failed to establish that there was an error or mistake apparent on the face of the record or there was such material available on record, which, if not taken into consideration, would cause miscarriage of justice.



10. The review petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

(Chakradhari Sharan Singh, J)

Pradeep/-

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

