

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.276 of 2018

In

Letters Patent Appeal No.714 of 2016

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Rakesh Kumar Sharma, S/o Late Ramanand Sharma, Resident of Village-Sindwari, P.S.-Konch in the District of Gaya presently Residing at Dr. Zakir Hussain Institute Campus, P.S. Kotwali, District-Patna.

... .. Appellant/Petitioner

Versus

1. The State Of Bihar.
2. The Secretary, Art, Culture and Youth Department, Government of Bihar, Patna.
3. Deputy Secretary, Art, Culture and Youth Department, Government of Bihar, Patna.
4. The Director, Student and Youth Welfare, Art, Culture and Youth Department (Archaeological Directorate), Government of Bihar, Patna.
5. The Collector, Gaya.
6. The Union of India through its Secretary, Ministry of Culture C-Wing, Shastri Bhawan, New Delhi.
7. The Director, Archaeological Survey of India, New Delhi.

... .. Respondent/Opposite party

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Appearance :

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Advocate Mr. Manish Dhari Singh, Advocate
For the Respondent/s	:	Mr. Sarvesh Kumar Singh, A.A.G. 13 Mr. Shakib Ayaz, A.C. to A.A.G. 13

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-01-2019

The Civil Review Application was heard lastly on 3rd January, 2019 and the grounds taken by the review petitioner for reviewing our judgement dated 09.07.2018 in L.P.A. No. 714 of 2016 have been taken note of in our order dated 03.01.2019. The full text of the order dated 03.01.2019 is reproduced hereunder for a ready reference.



“Heard Ms. Nivedita Nirvikar, learned counsel for the applicant, and Shri Shakib Ayaz, A.C. to A.A.G. 13 for the State of Bihar.

It is submitted by the learned counsel at the very outset that against the judgement of the Division Bench dated 9th July, 2018, Special Leave to Appeal No. 29652 of 2018 was filed and the following order was passed disposing off the said appeal:-

“We see no reason to entertain this petition. Accordingly, the special leave petition is dismissed.

Liberty is granted to the petitioner to apply to the High Court for clarification and/or review.

Pending applications stand disposed of.”

Learned counsel contends that it is in the light of the said observations that the present application is being pressed which had been filed prior to the filing of the S.L.P.

Learned counsel for the applicant has relied on the judgement of the Apex Court in the case of Kunhayammed & Ors vs State Of Kerala & Anr reported in (2000) 6 SCC 359, to urge that since the review application had been filed prior to the disposal of the S.L.P. itself, therefore, it deserves to be entertained and, even otherwise, the Apex Court has made an observation while disposing off the S.L.P. granting liberty to the applicant to approach this Court for a clarification/review.

Broadly, two grounds have been pressed before us. Firstly, that while disposing off the appeal on 9th July, 2018, the Bench did not take notice of the letter of the Director dated 12th February, 2013 in terms of Section 13(1) Proviso, relating to the claim of the applicants for preserving their cultivatory rights over the land in question.

The second ground is that the observation and opinion expressed about the right, title and interest over the property for being adjudicated by the Civil Court has not



been appreciated as per the documents which had been filed in support of the title of the appellants that was on record. It is, therefore, apparent that the judgement deserves to be reviewed.

Prima facie, we find that the judgement, in para 13 to 15, does take notice of the aforesaid aspects while concluding in para 16 and 18 of the judgement. Since the issue of title was not being pressed by the appellants, the same was left open to be decided by the appropriate forum.

It is in this background that this Court has now to consider as to whether any such clarification can be issued, as prayed for, in relation to the claim of the cultivatory rights of the applicant.

Learned counsel for the State of Bihar prays that he may be granted an adjournment as the Court will be assisted in the matter by Shri Sarvesh Kumar Singh.

Let the matter come up in the post-lunch session on 9th of January, 2019.”

Today we have heard Mr. Sarvesh Kumar Singh, learned Additional Advocate General No. 13 on behalf of the State and the official respondents. Learned A.A.G., representing the State and its authorities, submits that the grounds taken by the review petitioner alleging that the Hon’ble Division Bench, while disposing of the Letters Patent Appeal, did not take notice of the letter of the Director dated 12.02.2013 in terms of Proviso to Section 18(1) of the Bihar Ancient Monument And Archaeological Sites, Remains Art Treasury Act, 1976, (hereinafter referred to as the ‘Act’ for short) is not correct



inasmuch as it would appear from a bare perusal of the judgement of the Hon'ble Division Bench under review that the said aspect of the matter has been fully taken care of and discussed in the judgement.

Learned Additional Advocate General submits that even the second ground taken by the learned counsel for the review petitioner with regard to his possession over the land in question has been discussed by the Hon'ble Division Bench while disposing of the Letters Patent Appeal, but in the given facts and circumstances, the issues with regard to right, title and interest over the property have been left open to be decided in the title suit.

Learned Additional Advocate General, however, accepts to this extent that so far as the letter dated 12.02.2013, issued by the Director in terms of Proviso to Section 18(1) of the Act is concerned, the said letter was neither interfered with by the Writ Court nor the Hon'ble Division Bench has interfered with the same and, to that extent, the letter dated 12.02.2013, so long as it remains in existence, is valid.

We, having heard learned counsel for the petitioner and learned Additional Advocate General No. 13 for the State, would clarify to the extent that neither the Writ Court nor the Hon'ble



Division Bench, while disposing of L.P.A. No. 714 of 2016, has taken any view against the said letter. The letter dated 12.02.2013 has been in terms of Proviso to Section 18(1) of the Act and, so long as that letter remains in the existence, whatever rights are flowing from the letter to the petitioner, the petitioner may claim those rights under the letter (Annexure 5). We would also note that Annexure 5 dated 12.02.2013 was issued by the Director, Archaeology, in compliance of the order dated 07.11.2012 passed by the learned Writ Court in C.W.J.C. No. 20888 of 2012 and, therefore, the order having passed in compliance of the order of the Court has not been interfered by the Writ Court. The rights flowing to the petitioner from the said letter will, however, be definitely subject to result/declaration which may come in the pending title suit.

This review application is disposed of in the terms stated above.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/Uma/-

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