

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CM Nos.6426-27-CWP of 2019 in
RA-CW No. 197 of 2019 in
CWP No. 1789 of 2015**

Date of decision : 20.12.2019

Raj Kumari and another

.... Petitioners

Versus

State of Haryana and others

.... Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Harsh Aggarwal, Advocate
for the applicant-petitioners.

Mr. Ankur Mittal, Addl. A. G., Haryana with
Mr. P.P. Chahar, DAG, Haryana.

* * *

DAYA CHAUDHARY, J.

Petitioners filed CWP No.1789 of 2015 before this Court to challenge award dated 09.03.2012, passed by the Land Acquisition Collector under Section 11 of the Land Acquisition Act, 1984 (hereinafter referred to as 'the Act') on the ground that the award was passed beyond the time prescribed under Section 11A of the Act and acquisition proceedings had lapsed. Said petition was dismissed vide order dated 19.11.2018 by the Division Bench of this Court. Subsequently, review application bearing RA-CW No.197 of 2019 has been filed after a delay of 34 days, by moving application for condonation of delay.

The only reason given for condonation of delay in filing of the

review application is that the writ petition was dismissed on 11.09.2018 and certified copy of the judgment was applied on 20.11.2018. Much time was spent in preparing and supplying the certified copy of the judgment as it was supplied on 10.01.2019.

On perusal of the record, it is apparent that the main petition was dismissed on 19.11.2018 and not on 11.09.2018, as mentioned in the application, which appears to be a typographical mistake.

Accordingly, for the reasons recorded in the application, the delay in filing the review application is condoned.

Learned counsel for the petitioners submits that the main writ petition was dismissed without taking into consideration the submissions made in the petition. The arguments raised by the petitioners were not taken into consideration. The petition was filed on 30.01.2015 in view of Section 11A of the Act, which provides that in case the award is not pronounced within a period of two years from the date of publication under Section 6 of the Act, the acquisition proceedings would lapse. Learned counsel further submits that the award was passed after a period of more than one year and eight months, which was within the period of two years. The provisions of Section 11A of the Act is mandatory and the award should have been announced within a period of two years. Learned counsel also submits that without going into the merits of the case, the writ petition was dismissed only on the basis of preliminary objection stating that the writ petition was filed after three years of pronouncement of award dated 09.03.2012. Learned counsel further submits that no notice under Section 12(2) of the Act was served upon the petitioners and they came to know about the award

only on 20.01.2015, when the officials of HUDA came to take possession. In support of his contentions, learned counsel for the review applicant has relied upon the judgments of Hon'ble the Apex Court rendered in cases ***Mulchand Khanumal Khatri Vs. State of Gujarat and others 2012(2) R.C.R. (Civil) 736, M/s Soorajmull Nagarmull Vs. State of Bihar and others 2016(1) R.C.R. (Civil) 129 and Haridas Das Vs. Smt. Usha Rani Banik & others 2006(2) R.C.R. (Civil) 511.***

Learned State counsel has opposed the contentions raised by learned counsel for the applicant-petitioners and submits that the main petition was dismissed not only on the ground of delay but by considering the merits as well. The award was passed in the year 2012 and the writ petition was filed in the year 2015 *i.e.* after a period of 3 years.

Heard arguments of learned counsel for the parties. We have also perused the judgment passed in the main writ petition as well as the averments made in the review application.

Admittedly, as per the provisions of Section 11A of the Act, the award is required to be passed within a period of 2 years from the date of publication of the declaration and in case no award is passed within said period, the entire proceedings stand lapsed. In explanation with the main provision of Section 11A of the Act, it is mentioned that in computing the period of two years, in case the proceedings are stayed by any order of a Court, that period is to be excluded.

In judgment dated 19.11.2018, a detailed finding has been given regarding the period of passing of the award as well as the time consumed in the litigation. The petitioners filed CWP No.5067 of 1985 and

at the time of preliminary hearing, order of stay of dispossession was passed on 18.10.1985 and thereafter, said petition was dismissed on 02.07.2010. Said order dated 02.07.2010 was never challenged and became final.

The award was passed in the year 2012 and the present petition was filed in the year 2015 *i.e.* after a period of 3 years. By considering the delay of three years, the Court declined to interfere on the ground of delay. Accordingly, it can fairly be stated that arguments were considered and petition was dismissed by considering the merits as well as delay. Moreover, there is no error apparent on record.

The review does not mean rehearing of the case as has been held in a number of judgments of this Court as well as of Hon'ble the Apex Court.

Same issue was there before the Division Bench of Himachal Pradesh High Court in case ***Commissioner of Income Tax Vs. H.P. State Industrial Development Corpn. Ltd. & connected matter, 2015(78) R.C.R. (Civil) 737***, wherein it was held that under the guise of review, parties are not entitled for re-hearing while exercising the powers of review as the review Court cannot sit in appeal over its own order.

Scope of Judicial review had already been considered in (i) ***M/s Harvel Agua India Pvt. Ltd. Vs. State of HP & Ors.***, Review Petition No.4084 of 2013 decided on 9.7.2014; (ii) ***K.P. Singh Vs. High Court of HP & Ors.*** Civil Review No.2 of 2012 decided on 12.11.2014 and recently in ***Rajinder & Ors. Vs. Gokal Chand***, Review Petition No.91/2015 decided on 12.8.2015, wherein after referring to the case law, the Bench has culled out certain broad principles regarding maintainability/non-maintainability

of the review petition, which are as under:

“(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 face of the record;*
- (iii) Any other sufficient reason.*

(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 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 negative.*
- (x) Review is not maintainable on the basis of a subsequent decision/judgment of a coordinate or larger Bench of the Court or of a superior Court.*
- (xi) While considering an application for review, court must confine its adjudication with regard to the material which was available at the time of initial*

decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(xii) Mere discovery of a new or important matter or evidence is not sufficient ground for review. The parties seeking review has also to show that such mater or evidence was not within its knowledge and even after exercise of due diligence, the same could not be produced before the Court earlier.”

Thus, it can be said that the power of review cannot be exercised only on the ground that decision is incorrect or erroneous as it is within the ambit of appellate Court/higher Court to see. In case, there is any error committed by the subordinate Court/lower Court, then the higher Court/appellate Court is competent to correct the error by exercising the power of appeal.

Accordingly, no ground is made out to review judgment dated 19.11.2018 and the present review application is dismissed.

Since the review application has been dismissed, the other pending miscellaneous applications, if any, stand disposed of accordingly.

**(DAYA CHAUDHARY)
JUDGE**

Dated : 20.12.2019
sunil yadav

**(ARUN KUMAR TYAGI)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No