

**RA-CW No.444 of 2017 and
CM No.13868-CWP of 2018 in
CWP No.15961 of 2014**

Vijay Kumar and another vs. State of Haryana and others

Present:- Dr. Surya Parkash, Advocate,
for the applicant-petitioners.

CM No.13868-CWP of 2018

This application has been moved under Order 22 Rule 3 read with Section 151 CPC for bringing on record legal representatives of deceased-Vijay Kumar-petitioner No.1. Legal representatives of deceased-Vijay Kumar are mentioned in para No.2 of the application, which has been supported by an affidavit.

For the reasons recorded in the application, the same is allowed subject to all just exceptions and legal representatives of deceased-Vijay Kumar are brought on record.

Amended memo of parties attached with the application is taken on record.

RA-CW No.444 of 2017

This application has been moved under Article 226 of the Constitution of India read with Section 114 and 151 CPC for review of judgment/order dated 16.08.2017 passed by the Division Bench of this Court in CWP No.15961 of 2014 titled as 'Vijay Kumar and another vs. State of Haryana and others'.

Order dated 16.08.2017 is reproduced as under:-

*“Present petition has been filed by the petitioners
seeking restraint against the official respondents not
to take forcible possession of the land owned by the*

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petitioners. The claim is sought to be set up on the ground that decree has been passed by the Civil Court (Junior Division), Fatehabad, in their favour in a suit for permanent injunction.

The stand taken by respondent no. 2 is that the land is owned by the Municipal Committee, Ratia, on which a park has already been developed. The land is in possession of the Municipal Committee, Ratia.

Considering the aforesaid factual matrix and that the case sought to be set up by the petitioners is on the basis of a civil court decree in their favour, in our opinion, the writ court is not appropriate jurisdiction, as the matter is in Civil Court. The present writ petition is dismissed. However, the same will not debar the petitioners from availing their appropriate remedy in accordance with law.”

Learned counsel for the applicant-petitioners submits that the applicant-petitioners are owner in possession of the land in dispute and the said land is not of Gram Panchayat and it was never transferred from Gram Panchayat to Municipal Committee, Ratia (respondent No.2). The land in dispute is Abadi Deh and the claim of Municipal Committee is falsified from the record. In the jamabandi, it has been shown that the land in dispute falls under Khasra No.360, which is Gair Mumkin Abadi. In case, the Municipal

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Committee, Ratia wants to acquire the land, then due process is to be applied and the applicant-petitioners are entitled for compensation also. Learned counsel further submits that all these factors have not been taken into consideration and the writ petition filed by the petitioners has been dismissed without saying anything on the merits and only on the ground that filing of writ petition is not the remedy as the dispute is of civil in nature.

Heard arguments of learned counsel for the applicant-petitioners and we have also perused the judgment/order dated 16.08.2017 passed by the Division Bench.

As per case of the applicant-petitioners, they are stated to be owner in possession of land in dispute and it is not the land of Gram Panchayat as it was never transferred from Gram Panchayat to Municipal Committee, Ratia. The land in dispute is Abadi Deh. The dispute is of ownership of land in dispute.

The question of title cannot be decided by this Court. The main writ petition was dismissed on the ground that the writ Court was not the appropriate jurisdiction being the civil in nature and remedy being with the Civil Court. Meaning thereby, the liberty has been granted to the applicant-petitioners to avail the appropriate remedy.

On perusal of prayer made in the main writ petition, it is apparent that the direction has been sought to be issued by the petitioners to restrain the respondents not to take forcible possession of the land in dispute. A further prayer has also been made for direction to respondent No.1 to take departmental/criminal action in accordance with law against respondents

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No.4 and 5. The petitioners are claiming their right over the land on the ground that they had purchased the same and the respondents wanted to construct 'Saheed Park' without acquiring and without following the procedure of law. Both the parties have raised their right over the land in dispute and as such, the title of the land is disputed. As per prayer of the petitioners, the respondents be restrained not to take possession of the land in dispute.

Accordingly, it can be said that the disputed question of facts are involved and the same cannot be decided by this Court as has been mentioned in order dated 16.08.2017.

The review application has been filed for recalling of order dated 16.08.2017 on the ground that the writ petition is the jurisdiction and the respondents be restrained from taking over the possession of land in dispute. While dismissing the main writ petition, liberty was given to the petitioners to avail the appropriate remedy before the Civil Court. While issuing notice of motion in the main writ petition on 12.08.2014, it was ordered that any construction raised in the area shall be subject to final outcome of the writ petition. Now more than five years have passed after issuing notice of motion and in case, any construction has been raised, the same cannot be considered at this stage.

Undisputedly, the Court has power to review the order in case, there is mistake or error apparent on face of record. The error has to be self-evident which is not to be found out by a process of reasoning. Review of the earlier order cannot be made unless the Court is satisfied that there is

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material error, manifest on the fact of the order, undermines its soundness or results in miscarriage of justice as has been observed by Hon'ble the Apex Court in case of ***Col. Avtar Singh Sekhon vs. Union of India and others, 1980 (Supp) SCC 562***. It is not open to the Court to re-appreciate the arguments/evidence and to reach at a different conclusion, even if that is possible. Review can be maintainable only under the circumstances when discovery of new and important facts come in the knowledge of the litigant and the same were not in the knowledge at the time of argument of the case or there is a mistake or error apparent on the face of record or any other sufficient reason is there. A review is not an appeal in disguise, whereby, an erroneous decision has been taken. It lies only when there is a patent error.

In the present case, none of the grounds is made out to review order dated 16.08.2017.

Accordingly, the present application for review of order dated 16.08.2017 is dismissed.

**(DAYA CHAUDHARY)
JUDGE**

**04.10.2019
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**(GURVINDER SINGH GILL)
JUDGE**