

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **Justice Arijit Banerjee**

And

The Hon'ble **Justice Kausik Chanda**

C.P.A.N. No. 2796 of 2014

With

I.A. No. C.A.N. 1 of 2015 (Old No. C.A.N. 7293 of 2015)

SHRI SADHAN ROY (BUDHUK) AND OTHERS

-VERSUS-

SHRI ARVIND KUMAR SINGH AND OTHERS

In

F.M.A. No.911 of 2012

With

I.A. No. C.A.N. 3 of 2014 (Old No. C.A.N. 10609 of 2014)

SADHAN ROY (BUDHUK) AND OTHERS

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

AND

R.V.W. No. 32 of 2022

With

I.A. No. C.A.N. 1 of 2022

THE STATE OF WEST BENGAL AND OTHERS
-VERSUS-
SADHAN ROY (BUDHUK) AND OTHERS

For the appellants/petitioners : Mr. Rudra Jyoti Bhattacharjee, Adv.,
Ms. Debjani Ghosal, Adv.

For the alleged contemnors : Mr. Susovan Sengupta, Adv.,
Mr. Subir Pal, Adv.

For the State : Mr. Susovan Sengupta, Adv.,
Mr. Subir Pal, Adv.

Mr. Avanindra Singh, Director,
Land Records & Surveys, W.B.

Mr. Koushik Chatterjee, Special Revenue
Officer and Technical Advisor
of DLR&S, W.B.

Mr. Samar Kumar Das, Survey Officer,
DLR&S, W.B.

Hearing concluded on : 11.05.2022

Judgment on : 20.05.2022

Kausik Chanda, J.:-

The review application being R.V.W. No. 32 of 2022 (The State of West Bengal and Others v. Sadhan Roy (Budhuk) and Others) seeking review of an order dated December 19, 2013, passed by a Coordinate Bench in F.M.A. No. 911 of 2012 and the Contempt Application being C.P.A.N. No. 2796 of 2014 (Shri Sadhan Roy (Budhuk) and Others v. Shri Arvind Kumar Singh and Others) which has been filed alleging violation of the said order of Coordinate Bench are taken up together for hearing and disposed of by this common judgment.

2. The applicants in the contempt application /respondent nos.1 to 4 in the review application/writ petitioners (hereinafter referred to as “the writ petitioners”) approached this Court by filing a writ petition being W.P. No. 16864(W) of 2011, wherein they claimed that C.S. Plot No.540 of Mouza-Dhapamanpur in the district of 24-Parganas (South), of which they were the owners, had been acquired by the State.

3. The writ petitioners relied upon an information slip supplied by the Special Land Acquisition Officer on October 12, 2012, which provided as follows:

“Reference above, the information in respect of C.S. Plot No.540 of Mouza-Dhapamanpur, JL No.1, P.S. Bhangore, is furnished hereunder:-

The C.S. plot no.540 in full had been acquired vide Case No.LA 4/41 of 55-56 under Act-1. So far available record no report over ‘award’ could be furnished.

The above information is given on the basis of present available office record.”

4. The writ petitioners, further, claimed that the said land has been utilised by the State as a part of No.16 Water Tank, Netaji Subhas Bose Complex, R.B.I. Staff Quarter and 40 feet metal road at L.A. Block, Salt Lake, Sector-III.

5. It was the case of the writ petitioners that despite the said land being acquired and utilised by the State, no compensation has been paid to them being the recorded “raiyaats” of the said land. They prayed for a direction upon the Collector, 24-Parganas (South), to pay compensation to them by making a fresh award in respect of the relevant land.

6. A learned Single Judge of this Court found that though the writ petition was filed only in the year 2011, the land in question was acquired in the year 1955-1956. The learned Single Judge dismissed the writ petition on the ground that there was no explanation regarding the delay in moving the writ petition after 55 years. The State could not produce any record regarding the award before the learned Single Judge. The learned Single Judge was of the view that one cannot expect the authorities to preserve all the records for all the years.

7. The said order dated November 3, 2011, was carried in an appeal by the writ petitioners, which was registered as F.M.A. No. 911 of 2012.

8. A Coordinate Bench of this Court by an order dated December 19, 2013, allowed the appeal and set aside the order of the learned Single Judge. The said Coordinate Bench was of the view that a citizen, whose property has been acquired, is entitled to compensation, and the State cannot take the plea that as the records are not available it would not disburse the compensation to the

persons interested. The said Bench directed the relevant Land Acquisition Collector to pass an award within a month from the date of communication of the order to him. It was, further, directed that the said Collector should immediately thereafter issue a notice under Section 12(2) of the Land Acquisition Act, 1894, to the persons interested.

9. Alleging violation of the said order, the writ petitioners have filed this application for contempt being C.P.A.N. No. 2796 of 2014.

10. When the said contempt application was taken up for hearing on December 6, 2021, the State was represented by its learned advocate and the matter was fixed on December 14, 2021. Thereafter the State took out this present application (R.V.W. No. 32 of 2022) for review of the said order dated December 19, 2013, passed by the Coordinate Bench. An application for stay (CAN No. 1 of 2022) was also taken out in connection with the said review application.

11. It is the case of the State in the review application that in order to comply with the order dated December 19, 2013, the writ petitioners were asked to appear before the Special Land Acquisition Officer, 24-Parganas (South), on September 4, 2014, but they could not produce any documents in support of their case. On April 7, 2015, a survey was conducted by an expert survey team and the survey report suggested that the plot in question being C.S. Plot No.540 corresponds to R.S. Plot No.1053 of Mouza-Dhapamanpur. Such plot was identified with the help of satellite imagery supplied by the mapping centre

of the Fisheries Department. It was found that the actual plot was located far away from the location of the land as claimed by the writ petitioners. To its surprise, the officials of the State found that C.S. Plot No.540 corresponding to R.S. Plot No.1053 of Mouza-Dhapamanpur was occupied by the writ petitioners together with other co-sharers as their ancestral property.

12. The State sought to clarify that the information dated October 12, 2012, provided by the Special Land Acquisition Officer, South 24-Parganas was based on the “overlapping register” of the land acquisition officer. Such an overlapping register is a mere reflection of the proposal from the requiring body. The L.A. Case number in the said information was provided by default but such overlapping register, in reality, does not reflect whether any L.A. case had been initiated and reached its logical conclusion or died prematurely.

13. The stand of the State was disputed by the writ petitioners. They admitted that they are in possession of R.S. Plot No. 1053, but denied the fact that the said R.S. Plot No. 1053 corresponds to C.S. Plot No.540. The writ petitioners asserted that they accompanied the joint inspection team but never identified C.S. Plot No.540 of Mouza-Dhapamanpur. According to the writ petitioners, R.S. Plot No.1053 is completely a different plot and two kilometers away from C.S. Plot No.540.

14. Since the writ petitioners sought to enforce a valuable right to property flowing from Article 300A of the Constitution of India, we considered the review application filed by the State and the contempt application filed by the writ

petitioners with due importance. We requested the Director, Land Records and Surveys to be personally present in Court along with the relevant records to assist us.

15. The Director of Land Records and Surveys appeared before us on May 11, 2022, with the relevant C.S. Map and R.S. Map. It appeared that C.S. Plot No.540 was included in Sheet No.5 while R.S. Plot No.1053 was included in Sheet No.12. The copy of the said R.S. sheet was superimposed with the C.S. sheet in presence of all the parties. It transpired that the C.S. Plot No. 540, in fact, corresponds to R.S. Plot No.1053.

16. The relevant government records were also produced, wherein it was also mentioned that C.S. Plot No.540 corresponds to R.S. Plot No.1053.

17. We have no reason to disbelieve the government records in view of Section 83 of the Indian Evidence Act, 1872, which gives rise to a presumption that maps or plans purporting to be made by the Central Government or the State Government are accurate. We are convinced that the R.S. Plot No.1053 corresponding to C.S. Plot No.540, in respect of which the writ petitioners prayed for compensation, was never acquired by the State.

18. It has been held in the judgment reported at **(1979) 4 SCC 389 (Aribam Tuleshwar Sharma v. Aribam Pishak Sharma)** as follows:

“...It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* [AIR 1963 SC 1909] there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice

or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

19. In the present case, we are of the opinion that the State has been able to make out a ground for review since from the facts as narrated above it is clear that only at the time of undertaking the survey on April 7, 2015, to implement the order of the Division Bench dated December 19, 2013, the State discovered the new and important fact that the writ petitioners were in fact in possession of R.S. Plot No.1053 in respect of which they claimed compensation. Such fact was not within the knowledge of the State officials when the matter was taken up by the Division Bench on December 19, 2013. The State cannot be, perhaps, blamed for the non-availability of records at that point of time since the writ petitioners approached the Court, admittedly, after 55 years from the alleged date of acquisition.

20. In that view of the matter, we have no other option but to recall and set aside the order dated December 19, 2013, passed in F.M.A. No. 911 of 2012, and allow the present review application.

21. Since we have allowed the application for review by setting aside the order dated December 19, 2013, there cannot be any justification to continue with the contempt proceedings, and accordingly, we drop the same.

22. R.V.W. No. 32 of 2022 is allowed. C.P.A.N. No. 2796 of 2014 in F.M.A. No. 911 of 2012 is dismissed. I.A. No. C.A.N. 1 of 2015 (Old No. C.A.N. 7293 of 2015), I.A. No. C.A.N. 3 of 2014 (Old No. C.A.N. 10609 of 2014) and I.A. No. C.A.N. 1 of 2022 are disposed of.

Arijit Banerjee, J.:

23. I had the benefit of reading the well authored judgment of my learned brother and I completely agree with the reasoning and the conclusion recorded in this Judgment. However, I take the liberty to add a few paragraphs in support of our view that this is a fit case warranting exercise of review jurisdiction.

24. Justice is a virtue which transcends all barriers and rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. Law is not a set of empty and mechanical rules. It is not an end in itself. It is a means to deliver justice. A law that obstructs administration of justice is a malediction, a contradiction in terms. A law that does not ensure justice is as useless as a refrigerator that does not cool, as vain as a fancy vehicle without the engine. If the Court finds that the error pointed out in the review petition was under mistake and the earlier judgment would not have been passed but for an erroneous assumption which, in fact,

did not exist and its perpetration has resulted in miscarriage of justice, nothing would preclude the court from rectifying the error.

25. One should also bear in mind that it has been repeatedly held by the Hon'ble Apex Court that the High Court is a court of plenary jurisdiction. The word plenary has been defined in Black's Law Dictionary, 9th Ed. As 'full; complete; entire'. Similar is the definition of the word 'plenary' in Wharton's Law Lexicon, 16th Ed. The Pocket Oxford Dictionary of current English (1996 Ed.) defines the word plenary to mean 'not subject to limitation or exceptions; not incomplete'. If the High Court feels that it has passed an erroneous order which has caused injustice to a party, in my opinion, nothing prevents the court from reconsidering the order and correcting the same by removing the error. In my opinion, not only the High Court has such power but also the solemn duty to do so. I am of the view that though O. 47 R. 1 puts a restriction on the parties to approach the court for review of an order only on the grounds mentioned therein, but, that provision does not and cannot curtail the High Court's power to pass orders *ex debito justitiae*. The High Court's inherent power to rectify an error, whether of fact or of law, cannot be abridged or restricted by legislation.

26. In the present case, the order under review was passed on the assumption that land of the petitioners was acquired by the State. Accordingly, a Coordinate Bench directed payment of compensation to the writ petitioners. It has subsequently transpired, as stated in details in the judgment authored by my learned brother that land of the petitioners was never acquired. The

petitioners are very much in possession of the land which they alleged was acquired. In such circumstances, requiring the State to pay compensation to the petitioners for land which the State never acquired, would be contrary to all canons of law and equity and would amount to serious travesty of justice, apart from causing undue enrichment of the petitioner at the expense of the State exchequer. The order under review was passed on the basis of a factual assumption which has turned out to be incorrect. Ends of justice require that the order under review be recalled and/or set aside.

27. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Arijit Banerjee, J.)

(Kausik Chanda, J.)