

November 29, 2022
Sl. No. 1
Court No.1
s.biswas

RVW 231 of 2022
In
WPA (P) 324 of 2021
With
CAN 1 of 2022
CAN 2 of 2022

Balaram Das
vs.
Dibakar Chakrabarty and others

Mr. Kishore Dutta, Senior Advocate
Mr. Jayanta Kumar Lahiri, Senior Advocate
Mr. Shibaji Kumar Das,
Ms. Debleena Lahiri,
Ms. Rupsa Sreemani, Advocates
... for the review applicant
Mr. Jahar Lal De,
Mr. N. Chatterjee, Advocates
... for the State
Mr. Dipankar Mandal, Advocate
... for the respondent Nos.6 to 8/
Chakdah Municipality

Affidavit of service filed by the petitioner is
taken on record.

The review petitioner is seeking review of the
order of this Court dated 29th September, 2022
whereby certain directions in respect of demolition of
building in question and restoration of land to its
original character were issued.

There is a delay of 19 days in filing the review
petition, therefore CAN 1 of 2022 has been filed.

Having regard to the explanation furnished in
the application and also taking into account of the
fact that the present review petition has been filed
after approaching the Hon'ble Supreme Court, we
find that a good ground is made out to condone the
delay. Accordingly, CAN 1 of 2022 is allowed.

Review petition is heard on merit.

The submission of learned counsel for the petitioner is that the provision of Section 4C(6) of the West Bengal Land Reforms Act, 1955 and Rule 5AA of the West Bengal Land Reforms Rules, 1965 were not placed before this Court and the *Doba* is not a water body and the application filed by the review petitioner for conversion of land is already pending. In the aforesaid circumstances, he advanced elaborate argument and sought review of the order.

The submission of learned counsel for the State is that under the guise of review the petitioner cannot seek reopening of the entire case and that the application which is filed by the petitioner is under Section 50 of the West Bengal Land Reforms Act, 1955 and it is not an application under Section 4C(6) of the Act, therefore reliance of the petitioner on the provision of 4C(6) and Rule 5AA is misplaced. He has submitted that the *Doba* is a water body and this Court while passing the order under review dated 29th September, 2022, has taken into account the rival contentions of both the parties in detail and has also considered the notice dated 15th December, 2021 and 23rd December, 2021 issued by the Block Land & Land Reforms Officer to restore the land to its original position. This Court had also taken note

of the fact that as per computerized record, the land was classified as *Doba*.

This Court while deciding the writ petition had found that land in question is a water body on which construction has been raised, therefore a direction was issued to demolish the said construction.

It is pertinent to mention here that against the aforesaid order of this Court, SLP (Civil) No.20011/2022 was preferred by the petitioner, which has been dismissed by the Hon'ble Supreme Court by order dated 14.11.2022.

In the matter of **S. Madhusudhan Reddy vs. V arayana Reddy and Others** reported in **2022 SCC OnLine SC 1034**, Hon'ble Supreme Court has summarized the principles for exercising of review jurisdiction as under:

“24. After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati²⁴, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. 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.*

The words “any other sufficient reason” has been interpreted in Chajju Ram v. Neki¹⁷, and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulse Athanasius¹⁸ to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.²⁵.

20.2. 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 negatived.”*

Earlier also the Hon’ble Supreme Court in the matter of ***Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*** reported in **1980 (2) SCC 167** had held as under:

“8. *It is well-ettled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: Sajjan Singh v. State of Rajasthan. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: G.L. Gupta v. D.N. Mehta. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: O.N. Mohindroo v. Distt. Judge, Delhi. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure,*

and in a criminal proceeding on the ground of an error apparent on the face of the record (Order 40 Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except “where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility”: Sow Chandra Kante v. Sheikh Habib.”

Learned counsel for the review petitioner has placed reliance upon the Single Bench judgment of this Court in the matter of **Niranjan Das vs. Lakshmi Mani Dasi** reported in **1986 Calcutta Weekly Note 318** and **Fazle Hakani vs. Sk. Arsed Ali and Anr.** reported in **1984 (89) Cal. W.N. 1081**. But those are the cases wherein the Single Bench of this Court had considered the issue of *Doba* being included under Section 2(7) of the Act of 1955 which defines land and which is a wide definition which even includes tank, therefore those judgments are of no help to the review petitioner.

Similar is the position in respect of the judgment of the Hon’ble Supreme Court in the matter of **S. K. Arsed Ali and Anr. vs. S. K. Fazle Hakani** reported in **1996 (11) SCC 585**.

No material has been pointed out by the learned counsel for the petitioner to show that *Doba* is not a water body. In fact the judgments which have been relied upon by learned counsel for the

review petitioner mention that the *Doba* in Bengali means immersed, low and swampy or inundated land.

That apart it is also noticed that in the review petition, certain documents have been placed on record without even seeking leave or disclosing them to be new documents.

Learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in matter of **Kunhayammed vs. State of Kerala** reported in **2000 (6) SCC 359** in support of his plea that even after dismissal of special leave petition the review petition is maintainable. There is no dispute to the said proposition but for seeking review, petitioner is required to show error apparent on the face of record which he has filed in the present case. The grounds raised by the petitioner for review may be grounds available in appeal, but they did not furnish any ground to enter into a limited field of review.

Learned counsel for the petitioner has placed on record the Division Bench judgment of the High Court of Madhya Pradesh in the matter of **State of M.P. and another vs. Jaswantipuri and others** reported in **1989 AIR (M.P.) 115** in support of the plea that if the amended provisions are not brought

to the notice of the Court then it furnishes a ground for review.

Since amended Rule 5AA of the West Bengal Land Reforms Rules, 1965 relied upon by the petitioner has no application in the present case, therefore the above judgment is of no help to the review petitioner.

Learned counsel for review petitioner has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **K. G. Derasari and another vs. Union of India and others** reported in **2001 (10) SCC 496** in support of the plea that if a binding decision of the Hon'ble Supreme Court is not considered then it furnishes a ground for review but no such binding decision taking a contrary view then the one which is taken by this Court has been pointed out. Therefore he is not entitled to benefit of the judgment.

Having regard to the aforesaid fact, we find that there is no error apparent on the face of the record and no ground for review is made. Hence, the review petition and connected application being CAN 2 of 2022 are dismissed.

At this stage learned counsel for the petitioner has prayed for stay of this order.

We do not find any ground to grant the prayer for stay especially when against the earlier order of

this Court, the SLP has already been dismissed by the Hon'ble Supreme Court.

Thus, the prayer for stay is rejected.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)