

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

R.V.W 271 of 2017

IA No. CAN. 1 of 2017 (Old No. CAN 11258 of 2017)

IA No. CAN. 2 of 2017 (Old No. CAN 11259 of 2017)

In

W.P.A. 25094 of 2016

With

W.P.C.R.C. 172 of 2017

STATE OF WEST BENGAL & ORS.

VERSUS

BIMAL SARDAR & ORS.

For the Applicants/Respondents

: Mr. Chandi Charan De, Adv.,
Mr. Rabindra Narayan Dutta, Adv.,
Mr. Hare Krishna, Adv.

For the Respondents/Writ Petitioners

: Mr. Debasis Sur, Adv.
Mr. Himadri Sekhar Paul, Adv.

Last Heard on : September 08, 2022

Judgment on : September 22, 2022

Shekhar B. Saraf, J.:

1. This review application has been filed by the State against an order dated April 10, 2017 passed by Justice R.K. Bag in W.P. No. 25094(W) of 2016.
2. The facts of the present matter are as follows :
 - a. The Applicant/Respondent is the State of West Bengal, service through the Secretary, Department of Land & Land Reforms, Government of West Bengal and others.
 - b. The Respondent no. 1/ Writ Petitioner is Bimal Sardar. He is the recorded owner of Plot No. 492 (area – 1.13 acres) Plot No. 493 (area 0.04 acres) and Plot No. 494 (area 66 decimals) of Mouza – Baunia Abad, J.L. No. 20, Khaitan No. 3041 and 4741 under P.S. Sandeshkhali, District – North 24 Parganas.
 - c. The plot was agricultural land and the Respondent/ Writ Petitioner had khas possession of the plot. He was cultivating this using his own men, bullocks and family members. In 2009, due to Cyclone Aila, Sunderbans were affected and the embankment was demolished, where the Writ Petitioner resided. Due to the damage and the Respondent was no longer able to cultivate the land.

- d. After the Cyclone Aila, in order to protect the local area and residential houses in the area, the Applicants/Respondents decided to prepare a ring bandh to prevent further flooding. In lieu of this, the Applicants acquired land, including the land of the Respondent/Writ Petitioner, under the provisions of the Land Acquisition Act, 1894.
- e. The Respondent/Writ Petitioner states that the Applicant/Respondent had acquired and took over possession of the demarcated land. The acquisition of the Respondent's/Writ Petitioner's land was registered as L.A. Case No. LA-4/116 of 2012-2013 and an award was made in connection with this case.
- f. Subsequently, a dispute between the parties arose regarding the payment of compensation owed to the Respondent/Writ Petitioner, for the land that was acquired from them under the provisions of the Land Acquisition Act, 1894, and in connection with L.A. Case No. LA-4/116 of 2012-13. The Respondent/Writ Petitioner contends that the award associated with the case has not been paid. The impugned order dated April 10, 2017 of Justice R.K. Bag also observed that there was nothing on record to indicate that the payment had been made to the Respondent/Writ Petitioner.
- g. From December 7, 2010 to September 1, 2016, the Respondent/Writ Petitioner approached various authorities to

disburse the compensation amount owed to him. He approached the Sub-Divisional Officer, Haroa, Irrigation Sub-Division, Basirhat, North 24 Parganas, Executive Engineer, Basirhat Irrigation Division duly recommended by Pradhan, Nazat-I Gram Panchayat, Sandeshkhali – I, ADM (LO) Land Executive, North 24-Parganas, Barasat, Project Directorate – I, the Deputy Secretary of the Govt of West Bengal as well as the Superintending Engineer, Eastern Circle, Irrigation and Waterways Directorate. Despite this, no action was taken by any of the concerned authorities to release the said compensation.

- h. On February 21, 2013 the Executive Engineer submitted a proposal in the aforesaid LA Case No. LA-4/116 of 2012-2013 to Additional District Magistrate and District Land and Land Reforms Office and conveying the fact that relevant estimate of land in question was sanctioned by the appropriate authority in connection with the said L.A. case for placement of fund as per provision of the Land Acquisition Act, 1894.
- i. On February 27, 2013, The Executive Engineer also solicited before the Additional District Magistrate and District Land and Land Reforms Officer, Barasat for compensation to be released under Act-I of 1894 through the Basirhat Irrigation Division, with regard to the acquisition of more or less 0.552 acres.

- j. The Respondent/Writ Petitioner did not receive compensation despite filing numerous applications before the concerned authorities and proceeded to send a demand letter dated September 1, 2016, to the concerned authorities, for the compensation and the interest thereto for the purpose of Aila, through his learned advocate on record.
- k. Being aggrieved by the inaction of the concerned authorities, despite approaching them on multiple occasions, serving a demand of justice, repeated prayers and remainders, the Respondent/Writ Petitioner preferred a writ petition under Article 226 of the Constitution, registered as W.P. 25094 of 2016. The Respondent/Writ Petitioner prayed for direction upon the Applicants/Respondents to make payment of compensation for acquisition of land in connection with L.A. Case No. LA-4/116 of 2012-2013.
- l. The Counsel for the Respondent/Writ Petitioner stated before the learned Judge that the Respondent/Writ Petitioner will be satisfied with the award assessed under the provisions of the Land Acquisition Act, 1894.
- m. After hearing the Writ Petition, Justice R.K. Bag passed an order dated April 10, 2017 directing the Additional District Magistrate and District Land and Land Reforms Officer, Barasat to pay the amount of award in connection with L.A. Case No. LA-4/116 of

2012-13 to the petitioner within a period of 8 weeks from the date of the order.

- n. Justice R.K. Bag also observed that the Applicants/Respondents prayed for accommodation, however, since the Applicants/Respondents has notice of the case since October, 2016, he refused the prayer for accommodation. In light of this, the learned Judge directed the Additional District Magistrate and District Land and Land Reforms Officer, Barasat to disburse the amount of award to the petitioner in connection with the L.A. Case.
- o. Aggrieved by this order, the Applicants/Respondents filed an application on June 16, 2017, for recalling or modifying the said order. However, this application was rejected in a hearing on November 3, 2017, by Justice R.K. Bag. The Applicants/Respondents were granted the liberty to file an appeal or a review application against the order.
- p. On June 16, 2017, the Applicants/Respondents preferred the present review application against an order dated April 10, 2017, passed by Justice R.K. Bag.
- q. The Applicants/Respondents also filed a C.A.N Application No. 11258/2017 on November 30, 2017 praying for condonation of delay in filing the review petition. The petition was filed on the

grounds that they did not have knowledge about the order dated April 10, 2017 and the pendency of recalling application led to an unintentional and unavoidable seven and half month delay in filing the review matter.

- r. The Applicants/Respondents also filed CAN Application No.11259/2017 on November 30, 2017 praying for a stay on the order dated April 10, 2017 or that appropriate order be passed keeping the contempt proceedings being W.P.C.R.C. 172 of 2017 in abeyance till the disposal of the instant review matter.

3. Mr. Rabindra Narayan Dutta, counsel appearing on behalf of the Applicants/Respondents has made the following arguments :

- a. The counsel contends that it is a settled position of law that parties to a matter should be allowed to submit their applications and have all those applications heard by the Court. He submits that the order was passed without calling for the records of the alleged Land Acquisition case or any affidavits, thereby vitiating this order as there is an error apparent on the face of the record.
- b. The counsel also questions the very existence of the land acquisition case. He submits that the land acquisition lapsed and no notice of acquisition proceedings was published in the newspaper or in the Government Gazette. The counsel argued that the Applicants/Respondents under the statute has no power or

authority to pay compensation and to proceed with the said acquisition case and more specifically there is no existence of the alleged acquisition case.

- c. Continuing his arguments, the counsel states that the Land Acquisition No. 4/116 of 2012 – 2013 is wholly wrong. He further submits that the Respondent/Writ Petitioner had suppressed material facts that would have otherwise provided a clear picture of how much land the Respondent/Writ Petitioner actually owned and how much of it was being acquired by the State. The counsel claims that there was no acquisition in respect of the Plot Nos. 492, 493 and 494 as mentioned by the Respondent/Writ Petitioner, rather only 0.15 acre or 1.5 decimals of the plot was under notice of acquisition and the acquiring authority after completion of the proceedings under Section 9 of the Land Acquisition Act, 1894. He further submits that the Respondent/Writ Petitioner did not own plot no. 492 and 493 Mouza – Baunia Abad under J.L. No. 3041 and 4741, Police Station – Sandeshkhali, District – North 24 – Parganas and that these facts were not brought to the notice of the learned Judge when he was passing the said impugned order. Concluding his arguments, the counsel submits that the Respondent/Writ Petitioner and other co-sharers are still in possession and occupation of the said land in question and hence the judge erred in passing this order with an error apparent on the face of record.

4. Mr. Debasis Sur, counsel appearing on behalf of the Respondent/Writ Petitioner has made the following arguments:
- a. The counsel argues that it is a settled principle of law that when land is acquired by the State, then the owner is entitled to compensation under the provisions of the Land Acquisition Act, 1894. He states that the Applicant/Respondent had acquired and took over possession of the demarcated land and this included the Respondent's/Writ Petitioner's plots. The acquisition of the Respondent's/Writ Petitioner's land was registered as L.A. Case No. LA-4/116 of 2012-2013 and that an award was made in connection with this case. However, such compensation has not been paid for a prolonged period of time. He contends that the Respondent/Writ Petitioner is entitled to get compensation with reasonable interest for delayed disbursement of their compensation.
 - b. The counsel contends that there was no embargo on the authorities to release the compensation as Respondent No.5 in the writ petition, i.e., the Executive Engineer, Irrigation and Water Ways Directorate, Basirhat, Irrigation Division, had already accepted the proposal for compensation notwithstanding the fact that for last six years no amount of compensation has been paid. Furthermore, he submits that the local land owners jointly adopted resolution dated November 8, 2012 whereby in presence of the local Pradhan the affected land owners gave a No Objection

Certificate so far as the lands of Mouja – Baunia Abad J.L. No.20 in favour of the State so that ring bandh be made; a copy of this NOC has been annexed with the Writ Petition. The counsel elaborates upon this contention and states that the authorities had accepted this No Objection Certificate and thereby completed the project a long time ago. And that in light of this, there was no bar to take a decision relating to the grant of compensation.

- c. The counsel submits that the State has acted illegally by acting in ignorance of the procedure laid down for payment of compensation. The Executive Engineer had also submitted a letter to the Additional District Magistrate and District Land and Land Reforms Office, conveying the fact that the relevant estimate of the land in question was sanctioned by the appropriate authority in connection with the said L.A. Case for placement of fund as per provisions of the Land Acquisition Act, 1894.
- d. Lastly, the counsel for the Respondent/Writ Petitioner states in its Affidavit in Opposition to CAN Application No. 11258/2017, that the Executive engineer had informed the Superintending Engineer, Eastern Circle, Irrigation and Waterways Directorate vide letter dated March 19, 2015 wherein it re-submitted the land acquisition and payment of LA compensation relating to the compensation. The Respondent/Writ Petitioner also received a letter from the Sub-Divisional Officer, Haroa, Irrigation Sub-Division, Basirhat, on

December 12, 2015 informing the Respondent/Writ Petitioner about the completion certificate stating the acquisition of three plots; a copy of this letter has been annexed in the said Affidavit of Opposition to CAN Application No. 11258/2017.

Observation and analysis:

5. I have heard the counsel appearing for the respective parties and perused the materials on record.

6. At the very outset, it would be apt to discuss the jurisdiction of this Court to review its own judgment. I had the occasion to examine the principles of review while sitting on the Division Bench with the Hon'ble Justice Harish Tandon in the case of ***The State of West Bengal & Anr. Vs. Confederation of State Government Employees & Ors.*** reported in ***(2019) 3 WBLR (Cal) 39***. After examining a catena of Supreme Court Judgments [See ***Sasi (D through LRs -v- Aravindakshan Nair*** reported in ***(2017) 4 SCC***, paras 6-9; ***Haridas Das -v- Smt. Usha Rani Banik*** reported in ***(2006) 4 SCC 78***, paras 15-18; ***Parsion Devi -v- Sumitri Devi*** reported in ***1997 (8) SCC 715***, paras 7-10; ***Aribam Tuleshwar Sharma -v- Aribam Pishak Sharma*** reported in ***(1979) 4 SCC 389***, para 3] I had culled out the principles that emerge from a perusal of the land-mark Supreme Court Judgments on the issue of review. The same are delineated below :-

- a. The power to review is inherent in the High Court and the High Court can review its own order/judgment passed in a writ petition.
- b. This power of review is a limited power and would be governed by the principles of Section 151 read with Order XLVII Rule 1 of the Code of Civil Procedure.
- c. Firstly, a Court can review its own judgment when there is discovery of new and important matter or evidence that was in spite of exercise of due diligence not within the knowledge or could not be produced due to cogent reasons by the party seeking a review. Secondly, the court may review its order or judgment on account of some mistake or error apparent on the face of the record. Thirdly, a residuary clause in Rule 1 of Order XLVII provides for a review 'for any other sufficient reason.' It is to be noted that the Apex Court on several occasions has held that the third condition "for any other sufficient reason" has to be read within the four corners of the first two conditions.
- d. An error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record.
- e. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise". There is a sharp distinction between an

erroneous decision that can be only appealed against and an error apparent on the face of the record that is subject to review.

7. Given the limited scope of review as elucidated in the principles above, I am of the opinion that the contentions raised by the Applicants/Respondents in this review application do not satisfy any of the aforementioned principles regarding review by the Court of its own judgment.
8. It is the contention of the Applicants/Respondents in this review petition that there has been suppression of material facts by the Respondent/Writ Petitioner in order to secure the impugned order dated April 10, 2017 from this Court. The Applicants/Respondents claimed that the Writ Petitioner/Respondent did not disclose to the Court that the said land has not been acquired by the acquiring authority and that the writ petitioner is not the owner of the entirety of the said plots.
9. It is axiomatic that any petitioner in a writ petition has to approach the Court with “clean hands” based on good faith and has to produce before the Court all material facts that are relevant for adjudication of the said matter. In ***Asiatic Engineering Co. -v- Achhru Ram*** and others reported in ***AIR 1951 Allahabad 746*** (Full Bench), the Court observed that no relief can be granted in a writ petition under Article 226 which is based on misstatement or suppression of material facts. As authored by Ruma Pal, J. in ***S.J.S. Business Enterprises (P) Ltd.***

-v- State of Bihar and others reported in **(2004) 7 SCC 166**, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. The relevant portion has been extracted below:

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material from the consideration of the court, whatever view the court may have taken.....”

10. In my view, this submission by the State is incorrect as there has been no suppression of material facts whatsoever. Upon perusal of the impugned order dated April 10, 2017, it is clear that this Court directed the State to make payment of compensation for acquisition of land in connection with the State's own assessment for land acquisition being L.A. Case No. LA-4/116 of 2012-13. It is to be noted that in the impugned order Justice R.K. Bag had observed that the Respondent/Writ Petitioner did submit several applications before the appropriate authorities for release of compensation and the same had been placed on record. The No Objection Certificate given by the affected land owners was also placed on record.
11. Furthermore, the Executive Engineer, Basirhat Irrigation Division himself submitted a letter dated February 21, 2013 to the Additional

District Magistrate and District Land and Land Reforms Office, requesting for the relevant estimate of the land in question as sanctioned by the appropriate authority in connection with the said L.A. Case for placement of fund as per provisions of the Land Acquisition Act, 1894. The Respondent/Writ Petitioner has also stated in their Affidavit in Opposition to CAN Application No. 11258/2017, that the Executive Engineer, Basirhat Irrigation Division informed Superintending Engineer, Eastern Circle, Irrigation and Waterways Directorate vide a letter dated March 19, 2015 and re-submitted the land acquisition and payment of LA compensation relating to the compensation. In addition to this, the Respondent/Writ Petitioner received a letter from the Sub-Divisional Officer, Haroa, Irrigation Sub-Division, Basirhat, on December 12, 2015 which informed the Respondent/Writ Petitioner about the completion certificate stating the acquisition of three plots. Therefore, there exist no reasons to accept the contention that there was suppression of material facts by the Respondent/Writ Petitioner in the writ petition.

12. As far as the contentions by the Applicants/Respondents that the impugned order was passed without calling for the records of the alleged Land Acquisition case or any affidavits, it can be clearly seen from the impugned order passed by Justice R.K. Bag wherein he observed that the Applicants/Respondents had received the notice of this case in the month of October, 2016 itself. He was not inclined to give any more opportunity to the Applicants/Respondents for seeking

instructions to make effective submission in connection with this case. This Court is also of the same opinion as there exists no grounds to interfere with his findings.

13. The law on review is very clear wherein a party that files a review is required to show that there is discovery of new and important matter or evidence that was inspite of exercise of due diligence not within the knowledge or could not be produced due to cogent reasons by the party seeking a review. In this particular case, it is evident that there was failure on the part of Applicants herein to produce relevant documents at the time of hearing of the matter. Secondly, this review petition does not concern an error which is self-evident and the review sought clearly entails re-examination of new facts and further process of reasoning which is not within the scope of a review petition. Lastly, one may recall the exquisite words of Justice Krishna Iyer in ***P.N. Eswara Iyer –v- The Registrar, Supreme Court of India*** reported in **1980 (2) SCR 889** wherein he laments and states :

“..... unchecked review has never been the rule. It must be supported by proper grounds. Otherwise, every disappointed litigant may avenge his defeat by a routine review adventure and thus obstruct the disposal of the 'virgin' dockets waiting in the long queue for preliminary screening or careful final hearing.....”

Justice Iyer went on to further state as follows:

“Even otherwise, frivolous motions for review would ignite the 'gambling' element in litigation with the finality of judgments even by the highest court, being left in suspense. If, every vanquished party has a fling at 'review' lucky dip and if, perchance, notice were issued in some cases to the opponent the latter-and, of course, the

former, -would be put to great expense and anxiety. The very solemnity of finality, so crucial to judicial justice, would be frustrated if such a game were to become popular.”

Ergo, it can be said that review cannot be an appeal in disguise and that review jurisdiction has to be exercised by the Court in rare cases so that finality of judgements can be maintained.

14. Accordingly, for the reasons discussed above, this review petition is dismissed. There shall be no order as to costs.
15. Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)