

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.324 of 2019

In
Civil Writ Jurisdiction Case No.2656 of 2019

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1. Lalan Singh, Son of Sri Mundrika Singh, Resident of Amthua, Kajisara, P.S. Kako, District- Jehanabad, Bihar.
 2. Amrendra Kumar Son of Sri Brajbhushan Sharma, Resident of Paleya, Ward no. - 5, P.S.- Makhdumpur, District- Jehanabad, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Secretary, Department of Law, Government of Bihar, Patna.
3. The Sub Divisional Officer, Jehanabad.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Advocate
For the Opposite Party/s : Mr. P.K. Shahi, AG

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

5 10-08-2023 1. Heard learned counsel for the petitioners and
learned counsel for the respondents.

2. The instant application has been filed by the
petitioners praying for review of the judgment and order dated
17.8.2019 whereby the Division Bench of this Court was
pleased to dismiss CWJC no. 2656 of 2019 preferred by the
petitioners.

3. The petitioners by filing CWJC no. 2656 of 2019
challenged the validity and vires of sections 3, 4 and 5 of the



Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) Act, 2010 ('the Act' in short). They prayed that section 4(1) of the Act be declared ultra-vires for prescribing a conversion fee which is arbitrary, irrational as well as excessive, unrestricted application of section 4(2) of the Act to be unfair and illegal, to declare that sections 3 and 4 of the Act read together is ultra-vires the right guaranteed under Articles 14, 21 and 300A of the Constitution of India, section 5 of the Act is ultra-vires Article 14 of the Constitution and proviso to section 3(6) is discriminatory and violative of Article 14 of the Constitution.

4. Having heard learned counsel for the parties, the Division Bench of this Court not finding any merit in the writ application challenging the vires of various sections of the Act was pleased to dismiss the same by judgment dated 17.8.2019.

5. The instant review application has been filed by the petitioners on the ground that factors crucial to challenge are absent in the order and have been left out of judicial scrutiny.

6. Having heard counsel for the parties and having perused the material on record, it may be mentioned that the Order XLVII Rule 1 of the Civil Procedure Code provides for review of judgment on the discovery of new and important matters or evidence which even after the exercise of due



diligence was not within the knowledge of the review applicant or could not be produced by him or the judgment could be reviewed on account of some mistake or error apparent on the face of the record.

7. The Hon'ble Supreme Court dealt with Order XLVII Rule 1 of the Civil Procedure Code in the case of **Parsion Devi v. Sumitri Devi [(1997)8 SCC715]** and held in paragraph no.7 as follows:-

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC, In Thungabhadra Industries Ltd. v. Govt. of A.P. (1964) 5 SCR 174 (SCR at p. 186) this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent. A



review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.”

8. Further in the case of **Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale** [AIR 1960 SC 137], while dealing with as to what is error apparent on the face of the record, the Hon’ble Supreme Court in paragraph no.17 held as follows:

“(17).……An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ…… ”

9. In the case of **Lily Thomas v. Union of India** [(2000) 6 SCC 224] the Hon’ble Supreme Court held that in exercise of powers of review, the Court may correct its mistake but not substitute its view. In paragraph no.56, it was held as follows:-

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be



exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.”

10. So far as the facts of the instant case is concerned, learned counsel for the petitioners has not been able to point out any error/mistake in the judgment, what to speak of an ‘error apparent on the face of the record’. The submission made in support of the review application was only on the merits of the case for eg (1) The conversion fee being based on the capital value of the subject land, the provision infringed Article 14 of the Constitution;(2) Although the subject matter of the Act was non agriculture use of agriculture land, non agriculture purpose was not defined under the Act; (3) The



regulatory fee cannot be excessive and must have some nexus or be commensurate to the expenditure incurred by the State in maintaining and administering the regulatory establishment.

11. In the opinion of this Court the effort of learned counsel for the petitioners has been to argue the case on merit, all over again. Taking into consideration the judgments referred to herein above, it may be mentioned that in the garb of a review neither can the case/appeal be heard all over again nor can the same be treated like an appeal.

12. The Court finds no merit in the instant review application and the same is dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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