

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

R.V.W. No. 87 of 2022

With

CAN 1 OF 2022

In

WPA 4163 OF 2020

Reserved on : 04.05.2022

Pronounced on: 11.05.2022

Shyam Sundar Belel

...Appellant

-Vs-

State of West Bengal & Ors.

...Respondent

Present:-

Mr. Bhaskar Ghosh

Mr. Soham Saha, Advocates

...for the review petitioner
/private respondent No.13

Mr. Swapan Kumar Dutta, AGP

Mr. Prodyot Kumar Das, Advocates

...for the State

Mr. Basudev Gayen ,

Mr. Kumaresh Dalal, Advocates

.... for the Respondent/Review Petitioner

**Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)**

Rajarshi Bharadwaj, J:

1. The petitioner is seeking review of the order dated 16th March, 2022, whereby certain directions in respect of restoration of the disputed plot to its original character were issued and the competent authorities were asked to take necessary steps for the same.

2. The submission of the learned counsel for the petitioner is that the petitioner is the owner of the disputed land by purchase of the same by and under a deed of sale dated 7th Jan 2013. As per the R.S record of rights, the land is classified as 'Danga' and the reason for stating the land as 'Doba' in the deed of sale was not clearly known to the petitioner. However, the B.L & L.R.O had referred to the R.S Record of Right stating that the classification of R.S Plot no. 2587 is a 'Doba' while the L.R Record of Right was effectively in force. Moreover, the petitioner after purchasing it is maintaining the same as it is, thereby filing the review petition for setting aside the status report submitted by the B.L & L.R.O. It has been further submitted by the petitioner that there was an error prima facie on the status report, however, the same could not be pointed out by the petitioner as the copies of the same were not made available to him despite exercising due diligence in the matter. In the aforesaid circumstances, he advanced elaborate argument and sought review of the order.

3. The submission of learned counsel for the State is that under the guise of review, the review petitioner cannot seek reopening of the entire case where the respondent authorities acted on the direction of the Learned Court to restore the land considering the classification as "Pukur" as per a thorough status report. The petitioner has violated section 4C of the West Bengal Land Reforms Act, 1955 by unauthorized filing of the water body without obtaining prior permission from the authorities as per report submitted by the Revenue Inspector, Parbatipur, G.P and other evidences. Despite issuance of show-cause notice by the respondent authorities to stop such unauthorized filing of the plot and to remove any filling materials, the pond in question is filled up

leaving only one-fourth area at the south-west portion of as waterbody. The material pointed out by the review petitioner claiming to be that the plot in question is “Danga” is disputed, not corroborated with other relevant documents and such doubts of illegality is confirmed by obtaining a certified copy of Record of Rights. The respondent authorities took prompt action against the review petitioner keeping in mind the plight of villagers of the surrounding area in the ensuing rainy season for non-drainage of rainwater in the said pond.

4. This Court while deciding the writ petition had found that according to the BL & LRO, Domjur’s status report three-fourth of the pond in dispute had been filled up leaving only one-fourth area at the south-west portion as waterbody. The report further revealed the land in question has been classified as a “Pukur” and is being filled up despite being notices served to the petitioner for restoration of the same.

5. 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. Mayawati*, 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. Neki, and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius 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.}]

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.”]

6. 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-settled 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*.”

7. The Supreme Court in **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma as reported in (1979) 4 SCC 389** speaking through Chinnappa Reddy, J. has made the following pertinent observations:

“It is true there is nothing in Article 226 of the Constitution to preclude the 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 power which may enable an appellate court to correct 20 all manner of errors committed by the subordinate court.”

8. Having regard to the aforesaid fact, this Court finds that for seeking review, petitioner is required to show error apparent on the face of record which he has failed in the present case. The grounds raised by the petitioner for review may be grounds available in appeal, but he could not furnish any ground to enter into a limited field of review. Therefore, as there is no apparent error on the face of the record, no ground for review is made. Hence, the review petition and connected applications are dismissed.

[RAJARSHI BHARADWAJ, J]

[SHAMPA (DUTT) PAUL, J]

Kolkata
11.05.2023
PA (BS)