

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Review Application-CW-286 of 2022 in
Civil Writ Petition No. 2734 of 2007

Date of Reserve: 21.12.2022

Date of Decision: 24.02.2023

Laxmi Educational Society, Manesar, and othersPetitioners

Versus

State of Haryana and othersRespondents

CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. Chanderhas Yadav, Advocate
for the applicants-petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana, and
Mr.Saurabh Mago, Assistant Advocate General, Haryana and
Ms.Kushaldeep K. Manchanda, Advocate,
for the respondent(s).

RAVI SHANKER JHA, CHIEF JUSTICE

A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon, held Krishna Iyer J., in *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, 1980 (2) SCC 167*.

2. The present review application has been preferred by the applicants (petitioners) seeking review of the judgment dated 29.07.2022 passed by this Court, whereby the petition filed by them laying challenge to the acquisition proceedings was dismissed.

3. Learned counsel for the applicants contended that against the decision (*ibid*), rendered by this Court, the applicants had filed a Special Leave Petition (C) 31992 of 2022, and as certain additional documents were also placed on record, the Supreme Court, while disposing of the matter vide order dated 10.11.2022, observed that as the said documents, which were extremely relevant for adjudication of the matter, were not brought to the

notice of the High Court, the applicants were granted liberty to move this Court by filing a review petition and bring to its notice that since the purpose for which the land in question was sought to be acquired was already served, the land owned by the applicants was no longer required. He contended that the order dated 29.07.2022, deserves to be reviewed, since vehicle testing track, for which the land was acquired, has already been set up at another place. Further, by imparting education, the applicants were also serving a “public purpose” which was far more important than the purpose for which the land was acquired. It was contended that there was no occasion for this Court to term the applicants as “*trespasser*”, when their possession was protected by way of an interim order passed by this Court. Further, interpretation of “public purpose” could have been given in a better case, as the case at hand was not appropriate for explaining the meaning of “public purpose”. He also placed reliance on certain documents stating them to be essential for adjudication of the case. Further, the judgment was also liable to be reviewed because the counsel, who appeared and argued the matter, was neither engaged nor authorized by the appellants.

4. Controverting the contentions raised by the applicants, Mr. Ankur Mittal, learned Additional Advocate General, Haryana, pointed out that contention of the applicants that the Supreme Court had observed that as certain additional documents, which were extremely relevant, were never brought to the notice of this Court, the applicants were granted liberty to move a review application, is factually incorrect and misleading. He further pointed out that applicants have wrongly mentioned that the public purpose, for which the land in question was acquired, was construction of ‘*vehicle testing track*’, whereas, as per the notifications issued under Sections 4 and 6 of the Act of 1894, the public purpose was to develop an

“Integrated Model Township”. It was contended that construction of the vehicle testing track was only a part of the planning and since stay was in operation, the vehicle testing track had to be constructed elsewhere, and the land in question would be utilized for the public purpose as re-planned. Further, the documents relied upon by the applicants would have no bearing on the finality of the judgment passed by this Court, as the same relates to the permission granted to the applicants with respect to a School. A similar contention was raised at the time of hearing of the main petition, which was considered and rejected by this Court. As regards the photographs annexed with the petition, he submitted that it was the self pleaded case of the applicants that the land was vacant and required for future expansion. By placing on record the photographs and without clarifying that it does not relate to the acquired land, the applicants have made an attempt to mislead this Court. As a sequel of the aforesaid, he submitted that none of the grounds pleaded by the applicants qualifies to be a ground for seeking review, as neither there is any error apparent on the face of the record nor any additional document has been placed on record, which impels the Court to review its decision. He contended that while exercising the review jurisdiction, the Court does not sit in appeal and the view taken earlier can only be ‘corrected’ and is not to be ‘substituted’. He placed reliance on *Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 Supreme Court 233, Aribam Tuleshwar Sharmma v. Aribam Pishak Sharma and others (1974) 4 SCC 389, Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. & Ors., (2005)6 SCC 651, Jain Studios Ltd. v. Shin Satellite Public Co. Ltd., (2006)5 SCC 501, The State of West Bengal and others v. Kamal Sengupta and others 2008 (8) SCC 612, Kamlesh Verma v. Mayawati and others 2013 (8) SCC, 320, Sasi (D) Through Lrs. V.*

Aravindakshan Nair and others AIR 2017 SC 1432, Shri Ram Sahu (dead) through LRs and others v. Vinod Kumar Rawat and others 2020(12) Scale 415 and Columbia Holdings Pvt. Ltd and others vs. State of Haryana and others RA-CW-357 of 2015.

5. We have heard learned counsel for the parties and perused the record.

6. The case set out by the applicants is that against the decision of this Court, they had filed Special Leave Petition (C) No. 31992 of 2022, and the Supreme Court had observed that the additional documents, that were extremely relevant for proper adjudication of the matter, were never brought to the notice of the High Court. Accordingly, vide order dated 10.11.2022, the applicants were granted liberty to move a review petition, so that it could be brought to the notice of this Court that the purpose for which the land was sought to be acquired had already been served and the land owned by the applicants was no longer required:

“6. That the above-stated Special Leave Petition came for hearing before the Hon’ble Supreme Court on 10.11.2022, on the said date, the Hon’ble Supreme Court was pleased to pass the following order:-

Permission to file Special Leave Petition is allowed.

Delay in filing application for substitution is condoned.

Application for substitution (IA No.161896/2022) in bringing the L.Rs. of deceased petitioner Nos. 2 and 5 are allowed.

Cause title be amended accordingly.

Mr. Maninder Singh, learned senior counsel appearing for the petitioners wants to approach the High

Court for appropriate relief including review petition. In such circumstances, this petition is dismissed as not pressed with liberty to the petitioners as indicated above.

Needless to add that in the event, the review petition of the petitioners fail, the petitioners shall be at liberty to approach this Court again.”

Copy of the said order of the Hon’ble Supreme Court is annexed herewith as Annexure A-4. A bare perusal of which shows that the Hon’ble Supreme Court was pleased to observe that the said additional documents were never brought to the notice of Hon’ble High Court, which are very relevant for the proper adjudication of the present case, therefore, the applicants were granted liberty by the Hon’ble Supreme Court to approach the Hon’ble High Court again by way of review petition so that it can be brought to the notice of Hon’ble High Court that purpose of the land acquisition has already been served and there is no requirement to acquire the land of applicants. Therefore, on the basis of said liberty from the Hon’ble Supreme Court, the applicant prays for review of order dated 29.07.2022 passed by the Hon’ble High Court in the present case.....”

7. Whereas, the order (*ibid*), passed by the Supreme Court, would show that it was on the statement of learned Senior counsel for the applicants, the Special Leave Petition was dismissed as not pressed and liberty was granted to move this Court by filing a review petition. Nowhere in the order passed by the Supreme Court, it was observed that as certain additional documents were never brought to the notice of this Court, the applicants were granted liberty to move a review application so that those could be brought to the notice of this Court, to show that the public purpose

for which the land was acquired has since been served. Thus, version of the applicants is clearly distorted.

8. As against the facts on record, one of the grounds pleaded by the applicants seeking review of the judgment dated 29.07.2022, is that the land was acquired for a public purpose, namely, *for constructing a vehicle testing track*, and the said purpose had since been served, for the track had already been set up at another place. The pleadings, in this regard, in para 6(i) of the review application, are as follow:-

“(i) That the land of applicants can be acquired only for public purpose namely, for constructing a vehicle testing track, the said purpose has admittedly already served as vehicle testing track has been set up at some other place and now the land in question which belongs to applicants/petitioners is not required for public purpose, for which it was sought to be acquired.”

9. Significantly, even before the Supreme Court, in the Special Leave Petition (copy appended with the review application), filed by the applicants, they had raised a similar plea. The pleadings made in the Special Leave petition, (page 96 of the review application), are as follow:-

“A. Because the land in question was sought to be acquired for a proposed vehicle testing track for National Automotive testing and R & D Infrastructure Project (NATRIP) of government of India. As per the information supplied by the developing agency of the State government i.e. Haryana State Industrial and Infrastructure Development Corporation Ltd. (HSIIDC), NATRIP has already been allotted other suitable land in Sector M-11 for the aforesaid purposes. Thus, the land in question is no more required by the State Government for purpose for which it was sought to be acquired.”

10. However, that was/is not the position on record. We consider it expedient to point out that the land in question was acquired vide notifications dated 25.10.2005 and 24.11.2006, issued under Sections 4 and 6 of the Act of 1894, followed by an Award dated 24.02.2007, for the **public purpose**, namely, '*development of Industrial Model Township*' to be developed as "*Integrated Complex for industrial residential, recreational and other public utilities*". Thus, as rightly pointed out by Mr. Mittal, the public purpose, for which the land in question was acquired, was not "*construction of vehicle testing track*", but "*development of Industrial Model Township to be developed as an Integrated Complex for industrial residential, recreational and other public utilities*". This fact has also been noticed in paragraph No.7 of our judgment dated 29.07.2022. The construction of the vehicle testing track was, in fact, a part of the planning of Industrial Model Township. Upon being specifically asked, learned counsel for the applicants conceded that the public purpose, depicted in the notifications, is different from what has been stated in the review application as well as in the Special Leave Petition.

11. Even if the plea of the applicants is considered to be true, still it cannot be a ground to interfere with the judgment because 'change in public purpose' is no ground to challenge the acquisition proceedings. It is the conceded position that the *status quo* in the case at hand was operating since 26.02.2007 till the dismissal of the writ petition on 29.07.2022. It could have been a weighing factor in the mind of the Acquiring Agency/Beneficiary Department to make suitable changes in the planning. While delivering the judgment dated 29.07.2022, this Court had framed five issues for consideration, in view of the facts of the case, of which Issue No.2 was

categorically dealing with this aspect of the argument. Issues framed in paragraph No.20 of the judgment, are reproduced herein below:-

- I. Whether the permission for change of land use/licence/NOC/any other permission granted once, would grant immunity to the said land for all times to come, from its acquisition by the State under the applicable Land Acquisition Act (In the present case, it is Land Acquisition Act 1894), even if it is required for the “Public Purpose”?***
- II. Whether the land in question though vacant but being reserved for future expansion and may prejudice the future prospectus of the educational institution especially when the claim of planning/developing agency is that the land in question interferes merely in the proposed vehicle testing track which as per the petitioner doesn’t constitute any public purpose and thus, the same can be conveniently adjusted in the plan, could be a relevant consideration while deciding the validity of acquisition proceedings?***
- III. Whether recommendations having been made by the land Acquisition Collector u/s 5A of the 1894 Act to release the land, the State cannot proceed to acquire the said land especially when the beneficiary department is of the view that any such release made will affect the planning done to achieve the public purpose, for which, the land is being sought to be acquired?***
- IV. Whether the petitioners have made out a case of discrimination within the Ambit of Article 14 of the Constitution of India by referring to certain releases made by the State and setting up the plea of hostile discrimination on the part of the State?***
- V. Whether the land in question has been vested in the State with the recording of Rapat Roznamcha and the status of landowner has***

become of a “trespasser” as held by the Hon’ble Constitution Bench of the Hon’ble Supreme Court in Indore Development Authority Supra), the parameters on which, the writ court shall interfere in the acquisition proceedings at the instance of a “trespasser”?

12. While answering Issue No.2, a detailed discussion was made in paragraphs No.25 to 30 of the judgment, observing and holding that the definition of the public purpose is not capable of being given a static and definite meaning. It is the realm of the State to decide the public purpose for which the land is being acquired, though such a decision is always open for judicial review. In order to achieve the public purpose, the Acquiring Agency is within its rights to carry out planning and if there is any change in planning and even in “public purpose”, it is no ground to question the validity of the acquisition proceedings. Therefore, even if the land is now sought to be used for any other purpose than the vehicle testing track, as a part of planning, it falls clearly within the domain of the Acquiring Agency and does not give a licence to the applicants to project it as a new cause of action. If such a plea is accepted, that would severely affect the "*concept of vesting*", which would be neither legal nor in public interest. The only controlling provision as far as the land acquisition is concerned, is "*public purpose*". So long as the land is sought to be utilized for "*public purpose*", be it the original or the changed one, the action of the State cannot be called in question.

13. It was further contended by learned counsel for the applicants that “imparting of education” by the applicants is a more important “*public purpose*” than the acquisition of land for “*industrial purpose*”. The argument appears to be impressive, but is without any substance and there cannot be a

weighing balance for measuring which “public purpose” is more important and which is less important. The decision is purely executive, lying in the domain of the Acquiring Agency and as held, the sole criteria is that the land shall be utilized for the “public purpose”, less important or more important, is only a subjective satisfaction varying from person to person. Once the applicants have not laid challenge to the acquisition proceedings on the ground that the land acquired is not for a “public purpose”, whereas acquisition of the land for establishing an Industrial Model Township was a “public purpose” in view of the Act of 1894, no interference with proceedings carried out in accordance with the Act of 1894 is warranted.

14. As far as the case at hand is concerned, it has been a consistent stand of the respondents that the land was lying vacant at the time of issuance of notification under Section 4 of the Act of 1894 and the constructed portion was not even acquired. Admittedly, even at the time of filing of the writ petition, the applicants were only having the NOC and other permissions to set up a school/college and it was a specific plea that the land is for “future expansion”, which implies that there was no construction on the land in question. Yet the applicants had annexed the photographs of a running school and made pleadings in such a manner that, at first blush, it appears that there is a running school on the land in question. The applicants have conveniently not clarified this aspect in the review application, as also in the Special Leave Petition filed before the Supreme Court, to make out a case that there is a full-fledged school established on the land in question (which is sought to be acquired), whereas, the fact of the matter is that the land in question is vacant as the land on which the building was in existence, was not even made part of the acquisition proceedings.

15. Interestingly, the applicants have even questioned the validity of the observations made by this Court that the applicants are “*trespassers*” on the land in question, based upon a judgment of the Constitution Bench of the Supreme Court in *Indore Development Authority and others vs. Manoharlal and others AIR 2020 SC 1496*, on the ground that their possession was protected by the order of Court as “dispossession was stayed by a Division Bench of the equal strength” and thus, it is stated in the application that, *“the possession of any individual, which is stayed by the well established Court of Law cannot be treated as “trespasser” on the basis of the judgment which came almost a decade thereafter. It is very strange that the applicants, who are actual owners of the land in question and who are performing public duties/ public purpose by using the land in question have been treated as “trespasser” despite having protection from the Hon’ble High Court, which was continuing till the passing of the order under review”*.

16. Once the award is announced, the possession is taken by recording a Rapat Roznamcha, which has been held to be a valid mode of possession, the land vests in the State, which is the owner of the land. In the instant case as well, as has been noticed in paragraph No.45 of the judgment under review, the possession was taken vide Rapat No. 458 dated 24.02.2007 and the dispossession was stayed on 26.02.2007, therefore, on the date when the dispossession was stayed by this Court, the land had already vested in the State. The averment of the applicants being made today that they are “actual owners of the land”, is in the teeth of the law laid down by a Constitution Bench in *Indore Development Authority* (supra). The Constitution Bench has, in fact, clarified the doubts as regards the mode of taking possession of the land having a construction thereupon. It has been

held in categorical terms that the State cannot be expected to take individual possession of the tracts of the land acquired by it, therefore, Rapat Roznamcha has been held to be a valid mode of possession, irrespective of the fact that the land is vacant or construction exists thereupon. Therefore, the possession having been taken by the State Government would imply that the land vests and the possession now being retained by the applicants is nothing but of a “trespasser”.

In addition to the above, it has also been stated that this Court ought to have examined the issue of “public purpose” in some better case, as the case at hand was not an appropriate one to examine the said issue. We fail to understand can this even be a ground to seek review of the judgment?

17. As far as the plea of additional documents is concerned, the applicants have placed reliance on letter dated 30.09.2004, sent by the office of the District Education Officer, Gurugram, vide which permanent recognition was granted to the Laxmi Education School, Kasan, Gurugram; letter dated 25.01.2005, sent by the Central Board of School Education to applicant no. 1, with regard to affiliation of school; letter dated 27.12.2010, vide which information under the Right to Information Act was supplied to the Sarpanch of the village that ‘*vehicle testing track*’ has been set up at Plot No. 1, Sector M-11 Transport Hub Manesar; letter dated 19.10.2016, written by the Minister of State for sympathetically considering the case of the applicants; recommendations of Local Management Committee and the photographs. As has been held herein above, in order to seek review on the ground of new discovery of facts/documents, the applicants have to fulfill triple test. First thing to show is that the documents are relevant for adjudication of the case and have the strength for changing the view already taken by the Court. We have perused the aforesaid documents. As far as

letters dated 30.09.2004 and 25.01.2005 are concerned, the same are mere permissions granted by the authorities. The same plea was advanced before us even at the time of hearing of the main petition, which we had dealt in detail in Issue No.1 of the judgment, and came to the conclusion that grant of permissions/NOC's would not act as an estoppel for the State Government to acquire the land. As far as the RTI information, stating that the 'vehicle testing track' has been established elsewhere, is concerned, the same is of no use in view of the observations made by this Court to the effect that the land can be used for any public purpose and, in fact, in the case at hand, there is no change in the public purpose. At best, it is only a case of change in planning, that too, in view of the circumstances, when the Acquiring Agency could not have utilized the acquired land, as the stay granted by this Court was operating.

18. So far as the reliance placed on the letter written by a Minister of the State is concerned, the same bears no value in the eyes of law having no legal backing. Neither the said Minister has any authority nor he is a functionary of the State of Haryana and thus, any comments made by him are inconsequential. Further, the photographs annexed with the petition are completely misleading, because it was a pleaded case of the applicants that the land in question was vacant and it was acquired for future expansion. Thus, by way of these photographs, the applicants have only made an attempt to mislead the Court to think that a running school is existing on the land which is sought to be released. Therefore, in no manner, the documents relied upon by the applicants are relevant for adjudication of the case at hand and are, in fact, mere reiteration of the earlier contentions raised by the applicants. Thus, the first condition for seeking review on the ground of new and additional documents is itself not fulfilled and thus, these cannot be

entertained for reviewing the judgment passed by this Court. We also do not find any merit in the plea raised by the applicants that the judgment shall be reviewed because the counsel who argued the matter before this Court was not having authority to appear. Apparently, the plea sought to be raised lacks bonafides, as the learned Senior counsel, who appeared for the applicants and argued the matter at length before it was reserved for judgment, had been appearing consistently for the past several dates.

19. Thus, in context of the dispute that is sought to be raised by the applicants and that too by way of review petition, we consider it necessary to refer to a decision of the Supreme Court in *Sow Chandra Kante and another Vs. Sheikh Habib (1975) 1 SCC 674*, wherein it was observed that “it is the duty on the shoulders of the counsel to ensure that reviews are not filed at the drop of a hat, to ensure the conservation of judicial time for maximum use. As the Court observed, the entertainment of a review, without there being any mistake/error in the judgment, is neither fair to the Court nor to the public time, which is lost in re-hearing the case that has been fought and lost. In this regard, observations made by the Supreme Court are reproduced hereinbelow:-

‘... Mr Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a rehearing. May be, we were not right in refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review

of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order

which has the normal feature of finality.”

20. Having said that, we may observe that applicants have sought re-hearing of the entire issue under the guise of the review application, and that too, by misleading the Court(s). And, in any case, learned counsel for the applicants failed to point out if the judgment under review suffered from any error apparent on the face of the record. Even the additional documents, as demonstrated above, relied upon by the applicants are neither relevant nor of such a character that impels us to review our judgment. Accordingly, the instant review application is dismissed being devoid of any merit.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

24.02.2023
ravinder /AK Sharma

Whether speaking reasoned	√Yes/No
Whether reportable	√Yes/No