

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

R.V.W. 101 of 2018

IA No. CAN 1 of 2018 (Old CAN 5251 of 2018)

CAN 3 of 2021

Union of India & Anr.

Vs.

Terai Tea Company Limited & Ors.

In

FMA 755 of 2017

With

CPAN 1133 of 2017

For the Appellants/ U.O.I Appellants	: Mr. Pramod Kumar Drolia, Adv. Ms. Anamika Pandey, Adv.
For the Terai Tea Company Ltd.	: Mr. Sagar Bandyopadhyay, Adv. Mr. Niladri Banerjee, Adv. Mr. Deepankar Thakur, Adv.
For the State	: Mr. T. M. Siddiquie, Adv. Mr. Soumitra Bandyopadhyay, Adv. Mr. Priyabrata Batabyal, Adv. Mr. Suddhadev Adak, Adv.
Hearing Concluded on	: July 24, 2024
Judgement on	: August 01, 2024

DEBANGSU BASAK, J.:-

1. Defence Estate Officer, Siliguri Circle, and Union of India through the Secretary, Ministry of Defence (hereinafter referred to as the review applicants for the sake of convenience) have applied for review of the orders dated November 21, 2016 and December 6, 2016 passed in MAT No. 1147 of 2015.
2. Review applicants have filed an application being CAN 1 of 2018 for condonation of delay in filing the review application and CAN 3 of 2021 for leave to review the order dated November 21, 2016 and December 6, 2016. Since the pending applications along with the memorandum of review have been heard analogously over a number of days by us, we propose to dispose of the pending applications along with the memorandum of review by this judgement and order.
3. Learned advocate for the review applicants has submitted that, the review applicants were not impleaded as parties in the writ petition or in the appeal. Consequently, the review applicants were not aware of the orders passed either by the writ court or by the Appeal Court. The two orders of which review has been sought, adversely and prejudicially affect the right title and interest of the review applicants. He has contended that, the coordinate bench by an order dated

February 24, 2021 condoned the delay in filing the review application. The review applicants have complied with the direction for depositing the costs as awarded by the order dated February 24, 2021.

4. Learned advocate appearing for the review applicants has contended that, by a writing dated December 20, 1971 the Land Acquisition Officer, Darjeeling had made over possession of 21.54 acres of land to the predecessor in office of the review applicants No. 2. The review applicants have been in possession over the subject property ever since. The subject property has been utilised for the purpose of construction of 220 residential quarters for defence personnel.

5. Learned advocate appearing for the review applicants has submitted that, pursuant to directions issued by the District Magistrate the amount of compensation has been deposited by the review applicants. The opposite parties Nos. 1 and 2 had wrongfully and illegally claimed ownership of 21.13 acres of land. Such opposite parties had filed writ petitions being Matter No. 2193 of 1996 and WP No. 15616 (W) of 2004. None of the review applicants had been made parties to such writ petitions. WP No. 15616 (W) of 2004 was heard ex parte and allowed by the learned single judge on November 29, 2014. State Government had filed an appeal

being MAT No. 1147 of 2015 (FMA No. 755 of 2017) challenging the order dated October 29, 2014. Such appeal along with the application for condonation of delay had been taken up for hearing on November 21, 2016. In such appeal, advocate for the State government had consented for setting aside of the acquisition of 21.13 acres of land acquired under the provisions of the Land Acquisition Act, 1894. State government had through their advocate submitted before the Appeal Court that the State was willing to acquire 21.13 acres of land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Such order had been communicated by the State Government to the office of the review applicants No. 2 on December 20, 2016 when the review applications became aware of the orders under review. Thereafter, the review applicants had obtained legal opinion and filed the present memorandum of review. Relying upon **2019 Volume 18 Supreme Court Cases 586 (Union of India vs. Nareshkumar Badrikumar Jagad and Others)** learned advocate appearing for the review applicants has submitted that the review applicants are aggrieved parties and are therefore entitled to apply for review of the two orders passed by the Appeal Court. He has contended that, a notification

under section 4 of the Act of 1894 was issued in which the predecessor in interest of Terai Tea Co Ltd (hereinafter referred to as Terai Tea, for the sake of convenience) filed an objection under section 5A (2) of the Act of 1894. After disposal of such objection, declaration under section 6 of the Act of 1894 was published on February 5, 1985. Terai Tea has lessee in respect of 12.37 acres. Balance 8.76 acres is raiyati land and compensation in respect thereof has been paid to different raiyats. Therefore, Terai Tea is not entitled to any compensation as 12.37 acres is owned by the State. Consequently, the two orders of the Appeal Court directing compensation under the Act of 2013 requires to be reviewed.

6. Learned advocate appearing for the Terai Tea has drawn the attention of the Court to the provisions of the Requisition and Acquisition of Immovable Properties Act, 1952 and in particular to the preamble and sections 2 (b), 3 (a), 5 to 9 thereof. He has contended that, the Act of 1952 is a complete code and that, although the review applicants could have acquired the property concerned under the provisions of the Act of 1952, they have not done so.

7. Learned advocate appearing for the Terai Tea has drawn the attention of the Court to the writ petition being WP 15616 (W) of 2004. He has contended that, the requisition

notice issued under the Act of 1952 was under challenge. He has referred to the notification issued under section 6 of the Act of 1894 and submitted that, the review applicants exercised powers under Article 258 of the Constitution of India and delegated the power of acquisition to the State Government. State Government was a party to the writ petition. State Government was also a party in the appeal. Actions taken by the State Government who was duly authorised by the review applicants to undertake the process of acquisition, are binding upon the review applicants. State Government has conceded in the appeal that, the Act of 2013 applies and that, Terai Tea is entitled to compensation under the Act of 2013. Such concession is binding on the review applicants.

8. Relying upon **2014 Volume 3 Supreme Court Cases 183 (Pune Municipal Corporation and Another versus Harakchand Misirimal Solanki and others)** learned advocate appearing for Terai Tea has contended that, as on the date of the orders of the Appeal Court, the ratio of **Pune Municipal Corporation (supra)** was applicable. Therefore, the Appeal Court has rightly directed the State Government to either make over vacant possession of the property concerned or pay compensation under the Act of 2013.

9. Referring to Order 47 of the Code of Civil Procedure, 1908, and in particular to the proviso to Rule 1 thereof, learned advocate appearing for Terai Tea has contended that, subsequent change of law is no ground for review. The review applicants therefore cannot be allowed to take the benefit of the overruling of ***Pune Municipal Corporation (supra)*** subsequently in ***2020 Volume 8 Supreme Court Cases 129 (Indore Development Authority versus Manoharlal and others)***. In support of such contention, he has relied upon ***1997 Volume 8 Supreme Court Cases 715 (Parsion Devi and Others vs. Sumitri Devi and Others)***, ***2019 Volume 20 Supreme Court Cases 753 (Perry Kansagra vs. Smriti Madan Kansagra)*** and ***2021 Volume 3 Supreme Court Cases 1 (Beghar Foundation and Another vs. Justice K.S. Puttaswamy)***. He has pointed out that, the application for leave to review filed at the behest of the review applicants is still pending.

10. Relying upon ***1994 Volume 5 Supreme Court Cases 239 (Inder Prashad vs. Union of India and Others)*** learned advocate appearing for Terai Tea has contended that, apportionment of compensation between the lessee and the owner in respect of a property such as the subject property herein has been settled.

11. Relying upon **1964 Volume 5 SCR 294 (Jayantilal Amratlal Shodhan vs. F.N. Rana)** learned advocate appearing for Terai Tea has contended that, review applicants had exercised powers under Article 258 of the Constitution of India and are bound by the action taken by the State Government. The review applicants are not entitled to seek review of the orders of the Appeal Court which had been passed in presence of the State Government.

12. Relying upon **2007 Volume 5 Supreme Court Cases 85 (Kunwar Pal Singh vs. State of U.P and Others)** learned advocate appearing for Terai Tea has contended that, the prescribed period of limitation of 2 years from the date of publication of the declaration for passing the award has to be reckoned from the last of the dates of the 3 modes of publication prescribed under section 6 (2) of the Act of 1894. In the facts and circumstances of the present case, he has contended that, a period in excess of 2 years had elapsed from the date of publication of the declaration under section 6 of the Act of 1894 and the date of publication of the award. Consequently, the award was not published within the time period prescribed under section 11 A of the Act of 1894.

13. Learned advocate appearing for Terai Tea has contended that, the issue as to whether decisions rendered

prior to ***Indore Development Authority (supra)*** could be reopened has been considered and due to difference of opinion the matter has been referred to a larger bench **2023 Volume 9 Supreme Court Cases 757 (Government of NCT of Delhi and Another vs. K.L. Rathi Steels Limited and Others)**.

14. Learned Additional Government Pleader appearing for the State has contended that, possession of the 21.54 acres of land had been taken on March 16, 1972 from Terai Tea and made over to the review applicants in connection with Requisition Case No. 5 of 1971-72 arising out of section 3 (1) of the Requisition and Acquisition of Immovable Properties Act, 1952. State authorities had decided to invoke the provisions of the Act of 1894 and as such a notification under section 4 of the Act of 1894 with regard to 21.13 acres had been issued on February 2, 1982. Declaration under section 6 of the Act of 1894 in respect of 21.13 acres had been issued on February 5, 1985. Rate report with regard to 21.13 acres of land had been prepared on February 18, 1992. On August 14, 1992 District Magistrate, Darjeeling had prepared estimate with regard to compensation to be awarded in respect of 21.13 acres of land and intimated the same to the review applicants. Proceedings under section 11 of the Act of 1894 in connection with L A Case No. 4/5 of 1986-87 had been drawn up. In such

proceedings, an award had been passed. Corrigendum to the cost of acquisition had been issued to the review applicants on December 29, 1992. The review applicants had forwarded bank draft towards cost of compensation to the District Magistrate (Land Acquisition) Department, Darjeeling on February 24, 1993.

15. Learned Additional Government Pleader has submitted that, on January 8, 2004, the award passed on October 1, 1992 had been set aside by the High Court with the direction to pass a fresh award within the time stipulated therein. A fresh award had been passed on September 30, 2004 but beyond the time period fixed by the order dated January 8, 2004.

16. Learned Additional Government Pleader has contended that, the delay in passing the fresh award was occasioned by the dilatory tactics adopted by the Terai Tea in the award proceedings. In any event, the fresh award dated September 30, 2004 was for a limited area as the rest of the area was found to be vested.

17. Learned Additional Government Pleader has submitted that, in the writ petition being WP No. 15616 (W) of 2004 the High Court had set aside the notice dated February 2, 1982 issued under section 4 of the Act of 1894 and all subsequent

steps taken thereunder since the acquisition proceedings was not completed within the time stipulated under section 11 A of the Act of 1894. Being aggrieved by such direction, State had preferred appeal which was numbered as MAT 1147 of 2015. In such appeal, learned advocate for the State had submitted that the State would initiate fresh acquisition proceedings with regard to the land in question under the Act of 2013.

18. Learned Additional Government Pleader has contended that, possession of the land in question was taken on March 16, 1972. Possession had been made over to the review applicants. Review applicants had been in possession of the property in question since March 16, 1972. Question therefore of acquisition authorities taking possession under the Act of 1894 when such provisions were invoked for the purpose of acquiring the land in question did not arise. Possession taken under the Act of 1952 continued when proceedings under the Act of 1894 were undertaken. Consequently, according to him, one of the two conditions laid down in ***Indore Development Authority (supra)*** had been satisfied and therefore, the provisions of the Act of 2013 would not be attracted.

19. Learned Additional Government Pleader has contended that, both the State authorities as also the learned advocate appearing for the State in course of hearing of the appeal had

laboured under a mistake as to fact and law and therefore proceeded to submit that, proceedings under the Act of 2013 would be undertaken for the purpose of acquiring the subject property.

20. Learned Additional Government Pleader has submitted that, pursuant to the award passed in the acquisition proceedings under the Act of 1894, compensation was deposited with the State authorities by the review applicants. Consequently, the acquisition proceedings undertaken under the Act of 1894 could not have been said to have lapsed for the invocation of the Act of 2013.

21. Learned Additional Government Pleader has submitted that, the review applicants are entitled to seek review of the two orders passed in the appeal. According to him, there are errors apparent on the face of the record for the Court to pass appropriate orders on review. In any event, according to him, the orders passed by the Appeal Court of which review has been sought were passed upon mistake as to fact and law.

22. Terai Tea has claimed rights to receive compensation in respect of land over which review applicants have constructed residential quarters for defence personnel. Terai Tea has claimed right to claim compensation in respect of acquisition of such land on the basis of a deed of lease

executed by the State Government under the provisions of the West Bengal Estate Acquisition Act, 1953.

23. Terai Tea had been enjoying leasehold rights in respect of the plot of land over which the review applicants have defence personnel residential quarters. State Government had granted such leasehold rights to Terai Tea under the provisions of the West Bengal Estate Acquisition Act, 1953. Such leasehold rights had expired on August 25, 1972.

24. Under the provisions of the West Bengal Estate Acquisition Act, 1953 State Government can grant or renew a lease for a period not exceeding 30 years in the event, land in question is used, inter alia, for cultivation of tea.

25. Admittedly, possession of the subject land had been taken from the Terai Tea on March 16, 1972 and made over to the review applicants, albeit under the provisions of the Recognition and Acquisition of Immovable Properties Act, 1952. Possession of the subject land had remained with the review applicants since then. None of the parties have disputed such fact.

26. State Government had renewed lease under the provisions of the West Bengal Estate Acquisition Act, 1952 in favour of the Terai Tea on September 28, 1976 with retrospective effect from August 25, 1972 and valid till August

24, 2002. This renewal made on September 28, 1976 had included the subject land.

27. As on the date of renewal of the lease, that is, September 28, 1976 as also the date from which the renewal was sought to be given retrospective effect to, that is, on and from August 25, 1972, Terai Tea was not in possession of the subject land. Again, none of the parties before us has disputed such fact.

28. By virtue of Terai Tea not being in possession of the subject land and no tea cultivation being carried out on the subject land, on the date of renewal or on the date of retrospective effect of the renewal, the same could not have come within the purview of the provisions of the West Bengal Estate Acquisition Act, 1953 for a lease thereunder to be granted or extended.

29. Foundational basis of the Terai Tea to claim compensation in respect of such subject land is the renewed lease. No lease could have been granted or renewed on the date when the notification under section 4 of the Act of 1894 was issued on February 2, 1982.

30. Lease had been renewed under the West Bengal Estate Acquisition Act, 1953. The subject land had come out of the purview of the Act of 1953 on the date of renewal of the lease.

The review applicants had been in possession of the subject land pursuant to possession thereof being made over to them on March 16, 1972 under the provisions of the Requisition and Acquisition of Immovable Properties Act, 1952. Therefore on the date on which the notification under section 4 of the Act of 1894 had been issued, the review applicants being in possession of the land in question, the requirement to put them in possession was not there.

31. In any event, no right legal or constitutional of the Terai Tea had been violated by the proceedings initiated under the Act of 1894 on February 2, 1982. Terai Tea had no right, title and interest in respect of the subject land subsequent to March 16, 1972. On such date, the subject land had come out of the purview of a tea estate for it to be considered for renewal of lease under the provisions of the West Bengal Estate Acquisition Act, 1953.

32. State Government and the learned counsel appearing for the State Government had accepted during the hearing of the appeal that the State should proceed under the Act of 2013 when the Act of 2013 had no manner of application on the subject land.

33. Obligation has been cast upon the review applicants to pay compensation under the Act of 2013 to the Terai Tea

when Terai Tea has no right, title and interest in respect of the subject land, due to the stand taken by the State Government and the learned counsel appearing for the State Government at the hearing of the appeal.

34. Consequently, the rights of the review applicants have been affected prejudicially by the orders under review passed in the appeal. The review applicants therefore can be considered as parties aggrieved by the orders passed by the Appeal Court.

35. In ***Nareshkumar Badrikumar Jagad (supra)*** Supreme Court has considered provisions of Order 47 of the Code of Civil Procedure, 1908 and is of the view that, it does not limit the remedy of review only to the parties to the judgement under review. It has held that, even a third party to the proceeding, if such party considers itself an aggrieved person, may take recourse to the remedy of review. Such party however has to establish that, it is aggrieved by the order under review in some way.

36. The review applicants were not parties to the appeal in which the orders under review had been passed. The right, title and interest of the review applicants in respect of the subject land have been affected by the orders under review

and therefore, the review applicants can justifiably be held to be persons aggrieved by the orders under review.

37. Consequently, the application of the review applicants for grant of leave to apply for review of the orders under review is allowed.

38. In *Parsion Devi and others (supra)* Supreme Court has considered the scope of jurisdiction of review under Order 47 Rule 1 read with section 114 of the Code of Civil Procedure, 1908. It has held that, a judgement may be open to review inter alia, if there is a mistake or an error on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review. It has noted that, there is a clear distinction between an erroneous decision and an error apparent on the face of the record. It has observed that, while the first can be corrected by the higher forum, the later can only be corrected by exercise of review jurisdiction. It has also observed that, a review petition has a limited purpose and cannot be allowed to be an appeal in disguise.

39. In *Perry Kansagra (supra)* Supreme Court has noted the earlier authorities on the scope of review. It has held that an error which is required to be detected by a process of

reasoning can hardly be said to be an error apparent on the face of the record. It has also held that, to justify exercise of review jurisdiction, the error must be self-evident. On such parameters, it has found the exercise of review jurisdiction in the facts and circumstances of such case to be erroneous.

40. Supreme Court in ***2005 Volume 4 Supreme Court Cases 741 (Board for Control of Cricket in India versus Netaji Cricket Club)*** has held that, the words “sufficient reason” in Order 47 Rule 1 of the Code of Civil Procedure, 1908 are wide enough to include a misconception of fact or law by a court or even an advocate. It has also observed that, what would constitute sufficient reason would depend on the facts and circumstances of the case. An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*.

41. In the facts and circumstances of the present case, the review applicants were not heard when the orders under review had been passed as they were not parties to the appeal. The review applicants therefore could not bring to the notice of the Court that, Terai Tea had no right, title and interest to canvas over the subject land in the writ petition and therefore was not entitled to any relief either in the writ petition or in the appeal.

42. Absence of right, title and interest of Terai Tea is apparent from the face of the record as, the relevant facts were not brought to the notice of the Appeal Court by any of the parties to the appeal, by mistake or otherwise. Mistake has been acknowledged to be a sufficient ground to review an order. We are of the view that, in the facts and circumstances of the present case, the review applicants have made out sufficient ground for review of the orders passed by the Appeal Court.

43. In the event, the review as prayed for by the review applicants is not allowed, then, a grave mistake would continue to remain after the same has been discovered. Exercise of review jurisdiction should not be refused on the ground that an appeal is available, after discovery of a grave mistake in the order of which review has been sought. Orders under review had been passed prejudicially affecting the review applicants without hearing them as they were not parties to the appeal.

44. ***Inder Parshad (supra)*** has dealt with compensation of acquired land under the provisions of the Act of 1894. Since we are of the view that, Terai Tea has no right, title and interest in respect of the land of the review applicants, the ratio laid down therein has no manner of application.

45. Authority to delegate under Article 258 of the Constitution of India has been considered in ***Jayantlal Amratlal Shodhan (supra)*** and ***Kunwar Pal Singh (supra)***. Union of India had delegated the authority to acquire the land in question, to the State Government. State government had taken proceedings initially under the Requisition and Acquisition of Immovable Properties Act, 1952 and thereafter under the Act of 1894 to acquire the land. The review applicants had been placed in possession of the land in question under the Act of 1952. Acquisition under the Act of 1894 had been completed thereafter. Union of India as one of the review applicants has not authorised the State government concede, labouring under an erroneous mistake of fact and law or otherwise, that the provisions of the Act of 2013 are attracted. Nothing has been placed on record to suggest, let alone establish, that the review applicants authorised the State Government to make the submission as recorded in the orders under review.

46. It is trite law that, where, the delegatee has acted beyond the delegation, the delegator has the option not to accept such act of the delegatee and that such action of the delegator does not bind the delegator. In the facts and circumstances of the present case, State Government as the

delegatee had exceeded the delegation in recording the submission as appearing from the orders under review. The review applicants as delegator have opted not to accept such action of the State Government beyond the delegation. The concessions made by the State Government as has been recorded in the orders under review are not binding on the review applicants.

47. *Beghar Foundation (supra)* has observed that, change in law or subsequent decision of a coordinate or larger bench by itself cannot be regarded as a ground for review. In ***K L Rathi Steels Limited and others (supra)*** there was a divergence of the opinion of the Bench and therefore the matter was placed before the Chief Justice of India for appropriate orders.

48. The review applicants have not sought review of the orders of the Appeal Court on the ground of change in law but on the grounds that their right, title and interest in respect of the subject property stood adversely affected by such orders.

49. We have not been called upon to decide whether the ratio of ***Pune Municipal Corporation (supra)*** or the ratio of ***Indore Development Authority (supra)*** would apply or not since Terai Tea has been found not to be having any right, title

and interest in respect of the subject land on the date of initiation of the proceedings under the Act of 1894.

50. In view of the discussions above, the review applicants succeed. Orders under review dated November 21, 2016 and December 6, 2016 of the Appeal Court requiring the State Government to initiate proceedings under the Act of 2016 are recalled on review.

51. RVW No. 101 of 2018 along with the connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

52. I agree.

[MD. SHABBAR RASHIDI, J.]