IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

R.V.W.O. No. 42 of 2024

A.P.O.T. No. 129 of 2022
G.A. No. 2 of 2022
In

W.P. No. 290 of 2016

Eastern Coalfields Limited
(A subsidiary of Coal India Limited)

Vs.

Haribol Ghosh and Others

For the Review Applicant	:	Mr. Lakshmi Kumar Gupta, Sr. Adv. Mr. Arjun Roy Mukherjee, Adv. Mr. Nilankan Banerjee, Adv. Mr. Pradipta Basu, Adv.
For the Writ Petitioner	:	Mr. Partha Ghosh, Adv. Mr. Amal Kumar Datta, Adv. Ms. Simran Sureka, Adv. Mr. Debashis Das, Adv.
Heard on	:	05.11. 2024, 19.11.2024
Judgment on	:	28.11. 2024

Md. Shabbar Rashidi, J.

1. The review applicant is aggrieved with the Judgment and Order dated September 3, 2024 passed in A.P.O.T. No. 129 of 2022 arising out of WP No. 290 of 2016.

2. By the impugned judgment and order, the Writ Petition being WP 290 of 2016 was allowed setting aside a reasoned order dated March 31, 2016 passed by the authorities of the review applicant. The review applicant was directed to provide the writ petitioner/appellant in A.P.O.T. No. 129 of 2022, an employment under land loser policy within a period of six weeks from date.

3. The review applicant has canvassed that the material facts with regard to the existing land loser policy of the review applicant company particularly with reference to the location of the required 2 acres of land, length of its ownership and the character of such land in reference to it being a used land, was not brought to the notice of the court at the time of hearing of the appeal.

4. It was also submitted that at the time of hearing, appeal Court was also not apprised of the fact that as per Clause 2.3 of the guidelines dated July 31, 2000 issued on August 31, 2000, it was required that the owner must own the land at least for a minimum period of 3 years prior to offering the same to the Eastern Coalfields Limited, in order to avail the benefits under land loser policy.

5. It was also contended that the appeal court was also not told that as per the revised norms formulated by the Board of Directors of ECL on March 30, 2003 the land sought to be transferred to avail the benefits of land loser policy, different plots of land was required to be situated within one colliery. Land falling under different collieries could not be tagged for the purpose.

6. The review applicant further submitted that at the time of final hearing of appeal attention of the court was not drawn to the fact that in terms of Clause 8 of the land loser scheme, the land where no mining operation had taken place earlier was only to be considered for granting benefits under land loser scheme. A seller of used land did not qualify for the benefits of the policy. According to review applicant, three plots of land comprising 0.25 acres appertaining to Plot Nos. 1710, 1735 and 777 were used land where mining operation had already been carried out much earlier. Such fact was not placed at the time of appeal hearing.

7. The review applicant also contended that the plots of land sold by the writ petitioner to the Eastern Coalfields Limited were not situated in the same colliery area. Moreover, the same were not held by him for the required period of 3 years and that some of the plots so sold were used lands. As such, according to the provisions of prevalent land loser policy, the writ petitioner did not qualify for securing an appointment under the scheme. Such facts were not brought to the notice of the court at the time of hearing of the appeal and therefore, a review of the judgment and order passed in the appeal has been sought.

8. As to the maintainability of review application in the given facts, learned advocate for the review applicant relied upon ***1950 RLW 158 (1949 SCC OnLine FC 30) (Musammat Jamna Kuer vs. Lal Bahadur and Others)***, ***(2000) 1 Supreme Court Cases 666 (M.M. Thomas vs. State of Kerala and Another)*** and ***(2000) 6 Supreme Court Cases 224 (Lily Thomas and Others vs. Union of India and Others)***.

9. It has been submitted on behalf of the review applicant that certain facts as indicated hereinbefore, were not brought to the notice of the court, in course of hearing of the appeal. For such reason, the impugned judgment was passed on the basis of insufficient materials placed before it. The appeal court would not have passed the impugned judgment, had the entire facts been brought on record. Therefore, an error apparent percolated in the judgment.

10. On the other hand, learned advocate for the writ petitioner submitted that the lands of the writ petitioner were purchased by the Eastern Coalfields Limited. He qualified for a job under land loser policy. Such facts were adjudicated in the writ petition followed by the appeal through the impugned judgment and order. The prevalent land loser policy of the company, quantum of land purchased from the writ petitioner etc. with ancillary issues, was already at issue in the writ petition and the appeal and was adjudicated by the impugned judgment. There are no materials to justify a review of the impugned judgment and order. There is no point saying that relevant provisions of the land loser policy was not brought to the notice of the court while deciding the appeal being A.P.O.T. No. 129 of 2022. Learned advocate for the writ petitioner referred to the provisions of Section 114 read with Order XLVII of the Civil Procedure Code.

11. The writ petitioner filed a writ petition being WP 180 of 2014, claiming appointment under the land loser policy of the Eastern Coalfields Limited. The impugned judgment noted the order passed in such writ petition to the following effect:

> *"5. We considered the rival contentions of the parties. We find from the materials made available on record that the appellant by approached the Writ Court by way of a writ petition being WP 180 of 2014 where the writ petitioner sought for employment on the ground of the land loser policy. In such writ petition being WP 180 of 2014 was disposed of by order dated February 18, 2015. Relevant portion of such order is as follows :*
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>> *"Upon perusal of this policy I am convinced that the writ petitioner qualified as a land loser being the son and nominee of the original owner and seller of the land. The policy permits the owners of the land aggregating to about two acres of tag their land and claim one employment. Such a situation does not arise here because undisputedly the owner of the land was one.*
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>> *……………………………………………………………………… …………………*
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>> *Considering the fact that the respondent company was not given an opportunity to go into all the factual issues, I am not passing an order directing*

> *employment to the writ petitioner. I direct the General Manager, the third respondent, to consider the case of the writ petitioner for employment as a land loser, considering the observations and findings made above and the defence, which may be taken by the first respondent and pass a reasoned order, upon hearing the petitioner within three months of communication of this order."*
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> *6. No appeal was preferred against the order dated February 18, 2015 passed in WP 180 of 2014. Consequently, the right of the appellant to be considered as a land loser stood established.*
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> *7. That apart, the materials placed on record establishes that 1.75 acres of land was purchased by Eastern Coalfields Limited. Appellant before us is the son of the original owner in respect thereof. Appellant is the son of the original owner in respect of 0.25 acres of land also. Land loser policy of Eastern Coalfields Limited allows clubbing of land. The so-called condition of purchase of 1.75 acres of land from the original owner was never communicated to the appellant."*

12. The order passed in WP 180 of 2014 ended in a direction upon the General Manager, to consider the case of the writ petitioner for employment as a land loser, considering the observations and findings made therein and the defence, which may be taken by the first respondent and pass a reasoned order, upon hearing the petitioner within three months of communication of this order.

13. Pursuant to such order, a reasoned order was passed by the General Manager, dated June 8, 2015. The reasoned order was challenged in another writ petition being WP 290 of 2016 which was dismissed by order dated March 31, 2016 in the following terms that is to say:-

> *"The petitioner has challenged an order of June 8, 2015 passed by the General Manager, Kunustoria area rejecting the petitioner's application for employment under the land-loser scheme.*
>
> *The order impugned gives cogent reasons in support thereof. According to such order, the petitioner or the relevant family did not own the land for a period of five years prior to the same being sold to Eastern Coalfields Limited. It also appears that there was no provision for employment at the relevant point of time for land of any person being used by a coal company.*
>
> *Since detailed reasons have been indicated in the order impugned and the petitioner cannot detract therefrom, WP No.290 of 2016 is dismissed."*

14. Such order of the Writ Court was challenged in an appeal being APOT 129 of 2022 culminating in the impugned judgment and order which is under review in the present proceeding.

15. So far as the scope of review is concerned, it would be appropriate to reproduce Section 114 and Order XLVII Rule 1 of the Civil Procedure Code, 1908 which is as under:

> ***114. Review—*** *Subject as aforesaid, any person considering himself aggrieved—*
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> *(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,*
>
> *(b) by a decree or order from which no appeal is allowed by this Court, or*
>
> *(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.*
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> ***ORDER XLVII-REVIEW***
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> *1. Application for review of judgment— (1) Any person considering himself aggrieved—*
>
> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
>
> *(b) by a decree or order from which no appeal is allowed, or*

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

16. ***Musammat Jamna Kuer*** (supra) was an appeal against the dismissal of review application. It was noted thus,

"8. There can be no doubt that this appeal must be allowed. The mistake as to the items of property regarding which Mst. Jamna Kuer had laid claim is apparent on the face of the record. The trial Judge had clearly stated in his judgment that Jamna Kuer's claim related to properties 3 to 37 of the gazette notification. In paragraph 15 of her amended objection petition bad laid claims to all the properties left by Kunj Behari. On the 29th April 1942 it was admitted by the pleader of the applicants that all these properties related to the estate of Kunj Behari and that so far as the debtors were concerned, they were owners of only two properties mentioned in the gazette notification. In this situation it would have been appropriate if the High Court had corrected this error on

> *the review petition and saved the appellant the trouble and expense of an appeal to the Privy Council or to this Court. Whether the error occurred by reason of the counsel's mistake or it crept in by reason of an oversight on the part of the court was not a circumstance which could affect the exercise of jurisdiction of the court to review its decision. We have no doubt that the error was apparent on the face of the record and in our opinion the question as to how the error occurred is not relevant to this enquiry. A mere look at the trial court's decision indicates the error apart from anything else."*

17. In ***M. M. Thomas*** (supra), the Supreme Court observed that,

> *"14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In Naresh Shridhar Mirajkar v. State of Maharashtra [AIR 1967 SC 1 : (1966) 3 SCR 744] a nine-Judge Bench of this Court has recognised the*

aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record."

18. Similarly, in ***Lily Thomas*** (supra), the Hon'ble Supreme Court laid down that,

"The dictionary meaning of the word "review"………………………………………………………………… …………………………………………………………… Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to

> *make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice*."

19. In the case at hand, the impugned order has been sought to be reviewed on the grounds that the in course of hearing of appeal the court was not apprised of the fact that the writ petitioner was not entitled for an appointment under the land loser scheme as:

i. He did not own the land under question for the required length of time period i.e. a minimum of three years;

ii. The land was not situated within the same colliery area which disqualified the writ petitioner from the benefits of the scheme;

iii. The land comprising 0.25 acres which was subsequently purchased by the writ petitioner was a used land where mining activity was already carried out prior to its sale to the review applicant.

20. The claim of the writ petitioner for a job under land loser policy of the review applicant was at issue in WP 180 of 2014. It was held in such writ petition that on consideration of land loser policy the writ Court was convinced that the writ petitioner qualified as land loser being the son and nominee of the original owner and seller of the land. In the impugned order we had also noted that, “No appeal was preferred against the order dated February 18, 2015 passed in WP 180 of 2014. Consequently, the right of the appellant to be considered as a land loser stood established.”

21. Moreover, in terms of the order passed in WP 180 of 2014, the matter was again considered by the General Manager of the Colliery who decided the matter by a reasoned order dated June 8, 2015. On perusal of said reasoned order which has been annexed herewith, it transpires that the facts with regard to quantum of land sold, length of its ownership, its physical situation and many other facts were duly considered by the General Manager at length with reference to different provisions or clauses of the policy in vogue. The decision so arrived at in the reasoned order was under challenge in WP 290 of 2016.

22. Therefore, it is explicit that the land loser policy of the review applicant was always in issue in both rounds of litigation. The provisions of land loser policy with its clauses were adequately discussed and determined in such litigation. As such, the contention of the review applicant to the effect that certain facts were not placed before the court at the time of final hearing of appeal does not seem to be forceful and convincing to us.

23. Not only that, since after sale of the lands of writ petitioner to ECL, several representations were made by the writ petitioner, personally and through village committees as well as Union, before different authorities including the District Magistrate and officials of the Eastern Coalfields Limited from time to time. Such representations were accepted and/or forwarded by different authorities for favourable consideration by the review applicant. At no point of time, the review applicant ever informed the writ petitioner of his disqualification to receive an employment under the provisions of land loser policy. To the contrary, the materials placed before us exhibit that land from the writ petitioner/predecessor of writ petitioner was purchased at reduced price, much below the market value, ostensibly with an undertaking to provide employment to him. If that be so, the review applicant cannot be allowed to turn around and refuse to give a go-bye to its undertaking given at the time of purchase of lands.

24. In the case reported in ***2022 SCC OnLine SC 1034 (Madhusudan Reddy vs. V. Narayan Reddy)***, Supreme Court laid down, as to the scope of a review that,

> *"40. A perusal of the averments made in the second set of review petitions shows that there is no explanation offered regarding discovery of new material in the form of the documents sought to be filed. When it is the case of the respondents themselves that the relevant documents were all along available in the revenue records and they had already filed xerox copies thereof during the second revision proceedings, they can hardly be heard to state that the said documents were unknown to them and were unavailable for being produced before the learned Single Judge prior to passing of the common judgment and order dated 9-7-2013. It is evident from the above that the respondents had not discovered any new material for them to have moved a second set of review petitions. In order to satisfy the requirements prescribed in Order 47 Rule 1CPC, it is imperative for a party to establish that discovery of the new material or evidence was neither within its knowledge when the decree was passed, nor could the party have laid its hands on such documents/evidence after having exercised due diligence, prior to passing of the order. What to speak of conclusive proof of having undertaken an exercise of due diligence for*

accessing the relevant documents, there is not an averment made by the respondents in the second set of review petitions to the effect that they could not trace the documents in question earlier or that they had made sincere efforts to obtain certified copies thereof before the common order dated 9-7-2013 was passed, but could not do so for some cogent and valid reasons.

41. In other words, nothing has been stated on affidavit to substantiate the plea taken by the respondents at such a belated stage that the documents sought to be filed by them with the second set of review petitions had come to light after passing of the judgment and order dated 9-7-2013. Under the garb of the liberty granted to them, the respondents have tried to fill in the glaring loopholes and introduce evidence in the review proceedings that was all along in their power and possession and ought to have seen the light of the day much earlier. In fact, it appears that the civil revision petitions were originally argued to the hilt on several other grounds, not limited just to the revenue record, which were all considered and turned down as meritless. Therefore, we have no hesitation in holding that non-production of the relevant documents on the part of the respondents at the appropriate stage cannot be a ground for seeking review of the judgment and order dated 9-7-2013 particularly, when five opportunities enumerated in para 38 above, were available to them for production of the said documents, which were all frittered away, one by one."

25. In the instant case, nothing has been brought forth to demonstrate that the impugned order was passed without considering the relevant facts or that, certain relevant facts were actually not placed before the court during hearing of the appeal. The facts which are alleged to be not so considered were actually considered in both the writ petitions instituted by the writ petitioner and were extensively dealt with in the reasoned order of the General Manager dated June 8, 2015. No case of exercise of due diligence in not placing the aforesaid materials, if at all not considered, has been made out on the part of the review applicant.

26. Besides that, the employment of the writ petitioner under land loser policy was at issue in both WP 180 of 2014 and WP 290 of 2016. The General Manager of the colliery considered the issue through his reasoned order dated June 8, 2015. In the said reasoned order, the General Manager of the colliery has discussed all the relevant provisions of land loser policy at length. This reasoned order was under challenge in the second Writ Petition being WP 290 of 2016. In that view of the facts, the review applicant cannot claim that relevant facts were not placed before the Court at the final hearing of the appeal or that the impugned order was passed without consideration of material facts.

27. That apart, since the employment under land loser policy was very much at issue, the policy was extensively discussed in the reasoned order passed in pursuance of an order in the earlier round of litigation. The said reasoned order was under challenge in the present round of litigation. For the sake of argument, if we assume that even if the provisions of land loser policy could not be properly placed at the time hearing of appeal, such contention cannot be accepted in view of the principles of constructive *res-judicata.*

28. In the light of discussions made hereinabove, we find no merit in the review application. Consequently, the instant appeal being **R.V.W.O No. 42 of 2024** is hereby dismissed, however, without any order as to costs. Time to comply with the impugned judgment and order under review is, however, extended for a period of 4 weeks from date.

29. In view of the disposal of the appeal, connected application, if any, shall also stand disposed of.

30. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

31. I agree.

[DEBANGSU BASAK, J.]