



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

MISC. CIVIL APPLICATION NO.698/2023 IN FA NO.441/2015

Smt.Manisha wd/o Prakash Patil and anr

..VS..

**The Chief General Manager, Western Coalfields Limited, Nagpur
Area, Tahsil and District Nagpur and ors**

WITH

MISC. CIVIL APPLICATION NO.699/2023 IN FA NO.478/2014

Mr.Hukumchand s/o Babulal Sethi

..VS..

**The Chief General Manager, Western Coalfields Limited, Nagpur
Area, Tahsil and District Nagpur and ors**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
MCA No.698/2023

Shri R.L.Khapre, Senior Counsel assisted by Shri P.A.Abhyankar,
Advocate for Applicants.

Shri S.C.Samudra, Counsel for NA No.1.

Shri C.N.Deshpande, Counsel for NA No.3.

MCA No.699/2023

Shri R.L.Khapre, Senior Counsel assisted by Shri P.A.Abhyankar,
Advocate for the Applicant.

Shri S.C.Samudra, Counsel for NA No.1.

Shri C.N.Deshpande, Counsel for NA No.4.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 02/02/2024

PRONOUNCED ON : 27/02/2024

1. Heard.

2. Both applications have been filed by Manisha Patil; Chetan Patil, and Hukumchand Sethi who are original appellants in First Appeal Nos.441/2015 and 478/2014 for review of judgment passed by this court on 6.6.2023.

3. The applications for review are filed mainly on the ground that while passing judgment dated 6.6.2023, the court has not considered grounds raised in the memorandum of appeals which is an error on the face of record. Similarly, considerations and adjudication of grounds are not raised or argued, which is also an error apparent on the face of record. It is further contention of applicants that the court has not considered documents i.e deed of assignment in favor of legal heirs of original owner. The rights to assign and relinquish to take compensation are denied which constitute mistake apparent on the face of record. Thus, it is contended that the error is patent error and, therefore, review applications deserve to be allowed.

4. The applications are opposed by non-applicant Govind Kisanji Randive, who is original respondent, on the ground that review applications are by no means appeal whereby an erroneous decision is reheard and corrected, but lies only for patent error and, therefore, applications deserve to be rejected.

5. Heard learned Senior Counsel and learned counsel appearing for respective parties.

6. Learned Senior Counsel Shri R.L.Khapre, submitted that while dismissing appeals, this court has not

considered pursis under which documents of assignment executed by Hukumchand in favor of Manisha and Chetan. In view of the said documents, he has assigned all his rights and interests in the award dated 14.5.2004 passed in acquisition under the coal bearing areas in respect of land in favour of assignees i.e. applicants. The assigner has given up his claims for all benefits that may accrue under the said acquisition and assignees of his rights to receive all such benefits which are already accrued or which may accrue at any point of time in future, in favour of assignees. The assignor shall not be entitled for any benefits in the said amount. Thus, he submitted that in view of this assignment, respondent No.2 who is registered owner of the survey No.160/2 has assigned all his rights in favour of the applicants and, therefore, they are entitled to receive compensation. While passing the judgment, this aspect is not considered by this court and, therefore, the applications deserve to be allowed.

7. In support of his contentions, learned Senior Counsel placed reliance on following decisions:

1. Rajender Singh vs. Lt.Governor, Andaman & Nicobar Islands and ors, reported in (2005)13 SCC 289;

2. Dinkar s/o Kisanrao Warade vs. Gajanan Prasad Sahakari Gruh Taran Sanstha and

ors, reported in 2014(4) Mh.L.J. 299, and

3. Oriental Insurance Co.Ltd. and anr vs. Golulprasad Maniklal Agarwal and anr, reported in (1999)7 SCC 578.

8. *Per contra*, learned counsel Shri C.N.Deshpande for original respondent Govind Kisanji Randive submitted that this court has already considered the aspect by giving relevant considerations. No new facts are brought on record. There is no patent error and, therefore, the applications deserve to be rejected.

9. Before entering into controversy, it is necessary to see the settled law regarding scope and ambit of Section 114 read with order XLVII, Rule 1 of Code of Civil Procedure.

10. In the case of **Haridas Das vs. Usha Rani Banik (Smt.) and others**, reported at **2006(4) Mh.L.J. (S.C.) 14**, while considering the scope and ambit of Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, it is observed and held in paragraph Nos.14 to 18 as under:

“14. In *Meera Bhanja vs. Nirmala Kumari Choudhury*, (1995)1 SCC 1780 it was held that:

"It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order

XLVII, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma 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 be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of 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 merit. That would be in 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 all manner of error committed by the Subordinate Court."

15. A perusal of the Order XLVII, Rule 1 show that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.

16. Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma (AIR 1979 SC 1047) this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p-390, para 3)

"It is true as observed by this Court in Shivdeo Singh vs. State of Punjab (AIR 1963 SC1908) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inherent 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 of 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 all manner of errors committed by the Subordinate Court."

17. The judgment in Aribam's case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn

process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of Satyanarayan Laxminarayan Hegde vs. Mallikarjun Bhavanappa Tirumale[AIR 1960 SC 137] were also noted:

"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. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

18. It is also pertinent to mention the observations of this Court in the case of Parsion Devi vs. Sumiri Devi (1997)(8) SCC 715. Relying upon the judgments in the cases of Aribam's (supra) and Smt. Meera Bhanja (supra) it was observed as under :

"Under Order XLVII, Rule 1, CPC a judgment may be open to review inter alia, if there is a mistake or an error apparent 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 under Order XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise."

11. Thus, an application for review would lie *inter alia* when the order suffers from an error apparent on the face of

record and permitting the same to continue would lead to failure of justice. The power of review can also be exercised by the Court on the discovery of new and important matter of 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. An application for review would also lie if the order is passed on account of some mistake. It is well settled that reviewing Court is not an appellate court over its own order. Thus, the powers of review can be exercised for correction of mistake and such powers can be exercised within the limits of the statutes. The term 'mistake' or 'error' apparent is discussed by the Honourable Apex Court in the case of **State of West Bengal and others vs. Kamal Sengupta and another**, reported at **(2008) 8 SCC 612** and observed that the term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or

decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law.

12. The Honourable Apex Court in the case of **Ram Sahu (dead) through LRs vs. Vinod Kumar Rawat and others**, reported at **2021(3) Mh.L.J. 268** by referring catena of decisions of the Honourable Apex Court observed that the principles which can be culled out from the above noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order XLVII Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order XLVII Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order XLVII Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

13. It is further held in the case cited *supra* that to

appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order XLVII Rule 1 CPC.

14. Keeping in mind aforesaid principles, let us consider the claim of applicants.

15. As per contentions of applicants, this court has not considered documents i.e. deed of assignment by which original respondent Hukumchand sethi assigned the right and interest in favour of legal heirs of registered owner. They submitted that the decree passed by learned CJSD is

not binding upon original appellant Hukumchand Sethi as title of Prakash Patil is already transferred in favour of Hukumchand Sethi. Rightful person is Hukumchand Sethi who has assigned the right and interest by registered assignment deed and, therefore, observations of this court that he surrendered his right is not correct and, therefore, review applications deserve to be allowed.

16. On the appreciation of the entire material on record, it reveals that land gat No.160/2 admeasuring 1H of village Bina, tahsil Saoner is owned by Prakash Patil. On 11.7.1998, the Government of India by issuing notification acquired land for Bina Block Project. The WCL filed an application before the tribunal constituted under the Coal Bearing Acquisition and Development Act for determination of compensation. Original appellant Hukumchand and original respondent Govind Kisanji Randive claimed the right of compensation. As per contention Hukumchand, original owner Prakash Patil sold 1H land bearing No.160/2 to him for consideration of Rs.83,500/- on 18.5.1994 by a registered sale deed. In view of the said sale deed, he became owner of the said property. On 31.7.1994, Prakash Patil entered into agreement to sale the above land in favour of original respondent Govind Kisanji Randive. As no sale deed is executed in favour of Govind, he filed suit for specific

performance bearing No.172/1995. The said suit was decreed against Prakash Patil. As no sale deed was executed by original owner in favour of original respondent Govind Kisanji Randive, he filed execution proceeding bearing No.30/1997. On 14.10.1998, the legal heir of Prakash Patil filed MJC No.304/1998 for setting aside the *ex parte* decree which was rejected. Prior to filing of the misc. applications, in view of the decree passed by the court, original owner Prakash Patil executed sale deed in favour of original respondent Govind Kisanji Randive. The legal heirs preferred Writ Petition Nos.3554/2003 and 1555/2008 and the same are dismissed by this court. Thus, the facts on record show that in view of the decree passed by the competent court, the sale deed was executed in favour of the original respondent Govind Kisanji Randive 14.10.1998. The tribunal had considered the fact that original respondent Govind Kisanji Randive is the owner as the sale deed is executed in his favour. The said judgment and order was challenged by Hukumchand Sethi and legal heirs of original owner namely Manisha Prakash Patil and Chetan Prakash Patil by preferring appeal Nos.441/2015 and 478/2014. Considering the fact that the judgment and decree of learned CJSD attains the finality, the appeals are dismissed.

17. These review applications are filed mainly on the

ground that the sale deed was executed in favour of Hukumchand Sethi on 18.5.1994 prior to acquisition of the land. Though the sale deed was executed, the possession of the land was with original owner Prakash Patil. Prakash Patil was not having any rights or interests to execute agreement of sale in favour of original respondent Govind Kisanji Randive. Hukumchand Sethi was not party to the suit filed for specific performance and, therefore, the decree is not binding on him.

18. Now, by way of registered agreement, i.e. deed of assignment, he has assigned rights and interests to receive all such benefits to legal heirs of the original owner. It is further contended that assignor i.e. Hukumchand Sethi has received amount Rs.1,50,000/- in cash from assignees on 11.4.2007 and in consideration thereof the assignor has assigned his rights as mentioned above.

19. Thus, from the facts on record, it is undisputed that original owner executed sale deed of the suit land in favour of Hukumchand Sethi for consideration of Rs.83,500/- on 18.5.1994. As per the deed of assignment, though the land is purchased by Hukumchand Sethi, the possession was with the original owner. The recital of the assignment deed shows that the assignor could not and can not take requisite

steps to get dispute adjudicated and completed all formalities. He further stated that he has received amount Rs.1,50,000/- from the assignees on 11.4.2007. As per this agreement, he filed pursis before the special tribunal on 5.12.2013 and assigned his rights in favour of assignees. Thus, sum and substance of the contention of Hukumchand Sethi, the then purchaser, is that he received consideration amount from the legal heirs and, therefore, he assigned all rights. The facts on record further show that the original owner represented respondent No.3 that he is owner and entered into an agreement to sale, however not executed the sale deed and, therefore, respondent No.3 filed suit for specific performance bearing Special Civil Suit No.172/1995. The suit was decreed and the decree attained finality.

20. The foremost question is, whether sale deed executed by unauthorized person who subsequently acquires interest in property can be treated legal and valid?

21. Section 43 of the T.P. Act provides that where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such

property at any time during which the contract of transfer subsists. Thus, if at the time of transfer, the vendor/transferor might have a defective title or have no title and/or no right or interest, however subsequently the transferor acquires the right, title or interest and the contract of transfer subsists, in that case at the option of the transferee, such a transfer is valid. In such a situation, the transferor cannot be permitted to challenge the transfer and/or the transferor has no option to raise the dispute in making the transfer.

22. The Honourable Apex Court in the case of **Tanu Ram Bora vs. Promod Ch.Das, reported in 2020(1) Mh.L.J.163** dealt with this issue and held that intention and objects behind Section 43 of the T.P. Act seems to be based on the principle of estoppel as well as the equity. The intention and objects seems to be that after procuring the money (sale consideration) and transferring the land, thereafter the transferor is estopped from saying that though he has sold/transferred the property/land on payment of sale consideration, still the transfer is not binding to him. That is why Section 43 of the T.P. Act gives an option to the transferee and not the transferor. The intention of Section 43 of the Act seems to be that nobody can be permitted to take the benefits of his own wrong. In

the facts and circumstances of the case, Section 43 of the Act would come into play and protect the rights of plaintiff.

It is further held that where the transferee does act on the representation, there is no reason why he should not have the benefit of the equitable doctrine embodied in Section 43, however fraudulent the act of the transferor might have been.

23. The Honourable Apex Court also dealt this issue in case of **Ram Pyare v. Ram Narain and, reported in** (1985) 2 SCC 162 and held that Section 6(a) and Section 43 relate to two different subjects and there is no necessary conflict between them. Section 6(a) deals within certain kinds of interests in property mentioned therein, and prohibits a transfer simpliciter of those interests. Section 43 deals with representations as to title made by a transferrer who had no title at the time of transfer, and provides that the transfer shall fasten itself on the title which the transferer subsequently acquires. Section 6(a) enacts a rule of substantive law, while Section 43 enacts a rule of estoppel which is one of evidence.

24. The distinction between Section 6(a) and Section 43 is also dealt with by the Honourable Apex Court in the case of **Rakesh and ors vs. Board of Revenue, Uttar**

Pradesh and ors, reported in (2019)19 SCC 785 wherein by referring the judgment in the case of **Jumma Masjid vs. Kodimaniandra Deviah, reported in AIR 1962 SC 847** observed that, “now the compelling reason urged by the appellant for reading a further exception in Section 43 is that if it is construed as applicable to transfers by persons who have only spes succession is at the date of transfer, it would have the effect of nullifying Section 6(a). But Section 6(a) and Section 43 relate to two different subjects, and there is no necessary conflict between them; Section 6(a) deals with certain kinds of interests in property mentioned therein, and prohibits a transfer simpliciter of those interests. Section 43 deals with representations as to title made by a transferor who had no title at the time of transfer, and provides that the transfer shall fasten itself on the title which the transferor subsequently acquires. Section 6(a) enacts a rule of substantive law, while Section 43 enacts a rule of estoppel which is one of evidence. The two provisions operate on different fields, and under different conditions, and we see no ground for reading a conflict between them or for cutting down the ambit of the one by reference to the other. In our opinion, both of them can be given full effect on their own terms, in their respective spheres. To hold that transfers by persons who have only a spes succession is at the date of

transfer are not within the protection afforded by Section 43 would destroy its utility to a large extent.”

It is further observed by the Honourable Apex Court that the principle underlying Section 43 is a rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on that representation. It is immaterial whether the transferor acts bona fide or fraudulently in making the representation. It is only material to find out whether in fact the transferee has been misled. It is to be noted that when the decision under consideration was given, the relevant words of Section 43 were, ‘where a person erroneously represents’, and now, as amended by Act 20 of 1929, they are ‘where a person fraudulently or erroneously represents’, and that emphasizes that for the purpose of the section it matters not whether the transferor acted fraudulently or innocently in making the representation, and that what is material is that he did make a representation and the transferee has acted on it. Where the transferee knew as a fact that the transferor did not possess the title which he represents he has, then he cannot be said to have acted on it when taking a transfer. Section 43 would then have no application and the transfer will fail under Section 6(a). But where the transferee does act on the

representation, there is no reason why he should not have the benefit of the equitable doctrine embodied in Section 43, however fraudulent the act of the transferor might have been.

25. At this stage, it is required to be noted that original appellant Hukumchand Sethi has not initiated any proceeding for cancellation of the sale deed. On the contrary, evidence shows that he never claimed any right title or interest in the suit land. But, he has assigned the rights by obtaining the consideration amount which was paid. As such, Section 43 of the T.P. Act came into play and in view of Section 43, once there was an erroneous representation by the vendor, claim of heirs of the vendees either for cancellation of sale deed or claiming right would not be maintainable. Under these facts and circumstances of the case, rights of respondent Govind Kisanji Randive are protected by operation of Section 43 of the T.P. Act. The imperfect title of respondent Govind Kisanji Randive became perfect in view of protection given under Section 43 of the T.P. Act and, therefore, the contention of learned Senior Counsel that the sale deed is not binding on them is not sustainable.

26. The scope of review is also discussed by the

Honourable Apex Court in the case of **Rajender Singh vs. Lt.Governor, Andaman & Nicobar Islands and ors** *supra* in which also it is held that the court should not hesitate to review their own earlier orders when there exists an error on the face of record and interests of justice so demands in appropriate case.

27. In the case of **Oriental Insurance Co.Ltd. and anr vs. Golulprasad Maniklal Agarwal and anr** *supra* scope of review is stated.

28. Taking into consideration the scope of review petition, facts of the present case, and the law laid down by the Honourable Apex Court, the claim of respondent Govind Kisanji Randive is protected by Section 43 and the observations of this court while dismissing appeals are that respondent Govind Kisanji Randive became owner. The tribunal rightly held that respondent Govind Kisanji Randive became rightful owner to claim compensation. The applicants are not entitled for any claim and the right of transferee is protected. No error is apparent and, therefore, the contention, that the document of deed of assignment is not considered, is not acceptable as term 'mistake' or 'error' apparent by its very connotation signifies an error which is evident *per se* from the record of the case and does not

require a detailed examination, scrutiny and elucidation either of facts or legal position. If an error is not self evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of record for the purpose of Order Order XLVII Rule 1 of the Code of Civil Procedure.

29. In this view of the matter, misc. civil applications have no merits and are liable to be rejected and the same are **rejected**.

Misc. Civil Applications stand **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!