

28.03.2025.
3 & 4
Ct.No.654.
as

RVW 77 of 2025
with
CAN 1 of 2025
with
RVW 79 of 2025

Kajal Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Siddhartha Ruj.
... for the Petitioner.

Mr. Rajarshi Basu,
Mr. K. M. Hossain.
...for the State in RVW 77/2025.

Mr. Wasim Ahmed,
Sk. Md. Masud.
...for the State in RVW 79/2025.

Mr. Rajkrishna Mondal,
Mr. S. Saha.
...for the Respondent No.7.

1. Both the petitions for review are heard together for having thematic unity. These review petitions, along with their connected applications, have been filed to obtain a review of the common order dated 19th February 2025, passed by this Court in WPA 36126 of 2023 and WPA 24488 of 2023.

2. Mr. Ruj, the learned Advocate representing the petitioner, refers to an order passed by the Learned National Green Tribunal, Principal Bench, New Delhi, in Disposed of Case No. 122 of 2024, filed in connection with Original Application No. 258 of 2024. He contends

that the order made a reference to a compliance report dated 6th January 2024, filed by the Additional District Magistrate and BL & LRO, South 24-Parganas, which specifically noted that the filled-up portion of the pond in question had been removed and restored by the Kolkata Municipal Corporation. Mr. Ruj submits that this report proves that the petitioner did not fill up any portion of the pond. He argues that had the order of the learned Tribunal been presented during the hearing of the two writ petitions, it might have potentially altered the order dated 19.02.2025. In his view, the petitioner is entitled to obtain a review of the order dated 19th February 2025, due to the subsequent discovery of the order passed by the learned National Green Tribunal.

3. Mr. Ahmed, the learned Advocate representing the State in RVW 79 of 2025, submits that the issue raised in the present memorandum of review had already been raised by the petitioner in the main proceeding and has been addressed in the order. He argues that the petitioner cannot claim the right to re-agitate the same issue. Mr. Ahmed further submits that the matters now being raised can easily be agitated before the District Magistrate and the Deputy Director of Fisheries.

4. Mr. Basu, the learned Advocate representing the State in RVW 77 of 2025, concurs with the contention raised by Mr. Ahmed. He further submits that this application for review cannot be entertained, as all the

issues were addressed by this Court in the order dated 19th February 2025, which had ultimately relegated the entire matter to the District Magistrate, Collector, and the Deputy Director of Fisheries for further consideration.

5. The facts that need to be adumbrated for the disposal of the present review application are that the petitioner constructed a residential building on a piece of land under the impression that the land was recorded as 'Bastu.' To support this claim, he relied on a certified copy of the RS Record of Rights. In response, this Court directed the Block Land and Land Reforms Officer, as well as the Additional District Magistrate and DL & LRO, to submit a report. The report categorically stated that the data in the certified copy of the RS Record of Rights, produced by the petitioner, did not match the record maintained by the Land and Land Reforms Department of the State. Furthermore, the report clearly indicated that both the RS Record of Rights and the LR Record of Rights recorded the land in question as 'pukur par' (bank of the pond). Needless to state in case of conflict between two records of right, the latter shall prevail.

6. Admittedly, a Hon'ble Division Bench intervened in the matter while dealing with an intra-court appeal, MAT 1464 of 2013, and directed the concerned authority to constitute a High-Power Committee. The High-Power Committee conducted an

enquiry and, ultimately, by its order dated 2nd September 2013, directed the District Magistrate and Collector of South 24-Parganas to conduct a spot enquiry and take appropriate action in accordance with the law, should any violation of the provisions of the West Bengal Land Reforms Act, 1955, come to light. Additionally, the Deputy Director of Fisheries, Kolkata Zone, was instructed to conduct an enquiry regarding the construction made on 'Pukur par' in RS Dag No. 13845 and to take action in accordance with the provisions of the West Bengal Inland Fisheries Act, 1984.

7. Taking note of these facts, this Court disposed of both writ petitions by directing the District Magistrate and Collector, as well as the Deputy Director of Fisheries, to conduct enquiries in compliance with the order of the High-Power Committee. They were further instructed to resolve the issue while considering the order of the Hon'ble Division Bench passed in MAT 1464 of 2013, and after affording an opportunity for hearing to the petitioner and the added respondents.

8. Furthermore, the District Magistrate was directed to consider the matters raised by the petitioner in those writ petitions and assess whether any benefit under Clause 166 of the Land Reforms Manual, or any other relevant provisions of the West Bengal Land Reforms Act, 1955, or any other applicable enactment, could be extended to the petitioner. Before making any

final decision, the District Magistrate and Collector were also instructed to consult the appropriate Department in the matter.

9. It was also clarified that if any decision were made prejudicial to the interests of the petitioner, the District Magistrate was required to pass a reasoned order. Until such a decision was taken, the parties were directed to maintain the status quo regarding the nature and character of the petitioner's building and property.

10. Undeniably Section 144 and Order 47 Rule 1 of the Act governed the right of an aggrieved party to seek a review of an order and/or judgment passed by a Court of law and prescribe the procedure for obtaining such review. However, this provision does not directly apply to the writ petition in view of the explanation of Section 141 of the Code of Civil Procedure. However, such explanation does not affect inherent power of review of its own orders passed by a Constitutional Court under Article 226 of the Constitution of India. The plenary jurisdiction inheres in the Court to review its own order to prevent miscarriage of justice or to correct gross and palpable error committed by it.

11. According to well-established principles, an aggrieved party may seek a review of a judgment or order on three grounds:

i) The discovery of new and important matter of evidence, which, despite due diligence,

was not within the applicant's knowledge or could not have been produced at the time when the order was passed;

ii) A mistake or error apparent on the face of record and

iii) Any other sufficient reason.

12. It is a well-established principle, affirmed in a series of judgments, that the power of review should not be confused with appellate power. Issues that were raised and addressed by the court in the original proceedings cannot be re-litigated or re-argued under the pretext of seeking a review.

13. In cases where an applicant seeks a review of an order on the ground of new and important evidence, the Court will not only consider whether, despite due diligence, the applicant could have produced the evidence at the time the order was passed, but also evaluate whether, had this important evidence been presented, there was a possibility of passing a different order than the one review of which is sought in this application.

14. In the present case, in compliance with the order passed by a Hon'ble Division Bench of this Court, the High Power Committee conducted an enquiry and concluded that a further investigation needed to be carried out by the District Magistrate and the Deputy Director of Fisheries. The enquiry to be conducted by these two authorities must be done in strict compliance with the order passed by the Hon'ble Division Bench. A

Single Bench has no authority to halt such an enquiry, as these authorities are duty-bound to act according to the directions of both the High Power Committee and the order given in the intra-court appeal, MAT No. 1464 of 2013. In light of this, this Court referred the matter back to the District Magistrate and Collector, and the Deputy Director of Fisheries concerned. Therefore, there was little scope to pass any other order.

15. Paragraph 28 of the order dated 19.02.2025 indicates that this Court observed that the report noted the plot No. 13845 was under-recorded in terms of area but matched with 10,000. During the enquiry, it may be revealed that the filled-up portion of the pond had been removed, or that the petitioner did not convert any part of the pond into solid land. However, since the central issue in this litigation concerns whether the building was constructed on the embankment of the pond in violation of the relevant laws, there was no possibility of passing any order different from the one passed on 19.02.2025, even when considering the order of the learned National Green Tribunal. Furthermore, Mr. Ahmad has correctly pointed out that the petitioner will have the liberty to bring the order of the learned National Green Tribunal to the attention of the District Magistrate & District Collector and the Deputy Director of Fisheries, who will then conduct the inquiry.

16. Considering these facts, I am of the view that the petitioner has failed to establish any valid ground to

obtain a review of the order dated 19.02.2025. Therefore, no interference is called for in these review applications.

17. Accordingly, both the review applications and its connected application are dismissed. However, there shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)