

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE SOUMEN SEN
&
THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE**

**RVW 64 of 2022
CAN 1 of 2022
CAN 2 of 2022
In
SAT 90 of 2020
Kasem Ali Mondal & Ors.
Vs.
The State of West Bengal**

For the Applicants : Mr. Saptanshu Basu, Sr. Adv.,
Md. Younush Mondal

For the state : Mr. Supratim Dhar, Sr. Adv.
Ms. Tuli Sinha

Heard on : 20.06.2025

Judgment on : 30.06.2025

Dr. Ajoy Kumar Mukherjee, J.

1. This review application arises from the order dated 10.12.2021 passed in SAT 90 of 2020, where it was observed after hearing the appeal that this the second appeal does not involve any substantial question of law as both the courts below have correctly upheld the respondent's claim on appreciation of law and fact. The second appeal was dismissed at the admission stage after hearing the learned counsel for the parties.

2. Mr. Saptanshu Basu, Sr. Advocate in support of this review application argued that the property in question admittedly recorded as '*jal kar*' but the Division Bench, while passed the judgment failed to consider that *baor* (uncared water body), *jal kar*, *beel*, *water body* cannot be vested under the West Bengal Estate Acquisition Act and as such the error is apparent on the face of the order and that both the courts below have also erred in law and in fact in observing that the suit property is liable to be vested under the provision of West Bengal Estate Acquisition Act. His further contention is that, there was no requirement of filing 'B' form by the plaintiff for retention of the said property under the West Bengal Estate Acquisition Act, since the plaintiff are all along in possession of the property by way of pisciculture for generation after generation, on the basis of execution of the registered deed of *kabuliyat* by late Waresh Mondal, predecessor of the appellant to the then Zamindar Annada Prasanna Mukhopadhyay and also by paying property Tax to the government of West Bengal. His further contention is that the appellants are the valid owner of the land in question and there is nothing to show that the land has been actually vested to the government and on the contrary the investigation commissioner appointed by the court confirmed the area of the tank fishery. The Division Bench failed to consider that the appellants are entitled to file 'B' form even now, if it is presumed that the same was not filed in case of tank fishery according to report of investigation commissioner and as such Division Bench ought to have remanded the appeal to the court below for further consideration.

3. Mr. Supratim Dhar, Sr. Advocate argued that the appellant have no right to claim absolute right in the tank fishery and he was under an obligation to submit form 'B' within the prescribed time exercising the option to retain possession of the land in question as tank fishery. In this context, he placed reliance upon the case of **State of West Bengal and others Vs. Suburban Agriculture Dairy & Fisheries Pvt. Ltd & another** reported in **AIR 1993 SC 2103**.

4. We have heard and considered the submissions made by both the parties, pertaining the instant review application.

5. In **Kamlesh Verma Vs. Mayawati** reported in **(2013) 8 SCC 320**, Supreme Court summarized the principles, where review are maintainable and also where review does not lie. It states in para 20.1 that review will be maintainable.

- (i) *Discovery of new and important matter of evidence which after exercise of due diligence was not within the knowledge of petitioner or could not be produced by him*
- (ii) *Mistake or error apparent on the face of record*
- (iii) *Any other sufficient reason analogous to those specified in the rule.*

6. The court has also laid down the principles where review is not maintainable at para 20.2 which reads as follows:-

20.2. *When the review will not be maintainable:*

- (i) *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) *Minor mistakes of inconsequential import.*
- (iii) *Review proceedings cannot be equated with the original hearing of the case.*
- (iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- (vi) *The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- (ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.*

7. In view of above principles, let us consider the claim of the petitioner.

At first we need to consider whether the courts below as well as this Division Bench while passed the order had considered the said issues or not.

8. From the impugned order dated 10.12.2021 it is very much clear that plaintiff/appellant/petitioner herein specifically argued during hearing that plaintiffs acquired the said *baor* (uncared water body) by way of registered deed of Kabuliyat dated 20.05.1907 for which 15.50 paisa was fixed as annual fee and said Kabuliyat was executed in favour of Gobar Danga's Zamindar, Annada Prasanna Mukhopadhyay and as such name of their predecessor Manik Mondal was duly recorded in the finally published Record of Rights and they regularly paying tax to the government and are enjoying the suit property all along. It further appears from the said impugned judgment that during the course of argument the petitioner herein as appellant strenuously argued that the suit property is '*jalkar*'/baor and not tank fishery and as such government has no right to get it vested. Admittedly the property in question was recorded in the name of Manik Mondal as '*jalkar*' property having right to catch fishes "*jalkar mucch dhoribar satty achhey*".

9. This Division Bench while dealt with such submissions made by the counsel for the appellant made the following observation:-

*"Suit dag number property is not a Jalkar property but "Beel" property and cultivation is made thereon as pleaded by Government of West Bengal. The existence of the right of cultivation is material for the purpose of a decision as to whether the "tank" or "Beel" in question is a "tank fishery". Accordingly it can be said in view of this courts observation by a co-ordinate Bench in **Shanti Devi Vs Government of West Bengal** reported in **90 CWN 44** that the said "Beel" in question is a tank fishery and the intermediaries were entitled to retain the "Beel" as a tank fishery.*

In the present case the specific observation made by the Ld. Trial Court and First Appellate Court that there is nothing to show that the concerned

intermediary has retained the “Beel” property by filing “B” form at the relevant point of time . PW-1 in his evidence also categorically stated that he will not file “B” form in the court to show that the then intermediary ever retained the said tank fishery under the provisions of section 6(2) of the West Bengal Estates Acquisition Act, 1953.

As the property in question is liable to be vested under Section 6(2) of the West Bengal Estates Acquisition Act, 1953 and in absence of any proof of retention by the intermediary we do not find any reason to interfere with the concurrent findings of fact and enunciation of law by both the Trial Court and First Appellate Court.”

10. It is clear from the facts and circumstances of the case that there is no denial in the submissions of the appellant and also from the entry in record of right that on the date of vesting, the waterbody in question was being used for fishing i.e. tank fisheries and admittedly the appellants herein had not submitted form ‘B’ within the prescribed time, exercising the option to retain possession of the lands in question as tank fisheries and the aforesaid impugned order was passed on the basis of such materials.

11. Therefore, the contentions made by Mr. Basu in the review application was heard by us previously for good length of time. In the review application no other contention has been raised, nor any other new argument or new ground taken or has been pressed before us. Though Mr. Basu contended that the issue as to the right of the State to get the property vested and that the issue of no requirement of filing ‘B’ form in this case, had not been judged by the Division Bench but as I have quoted above that the said questions were pressed during hearing of appeal and have been duly dealt with.

12. Filing a review application on the self same ground that were agitated during the hearing of appeal does not bring a fair name either to the bar or to the counsel. In **Tamilnadu Electricity Board & Anr. Vs. N. Raju Reddiar & anr.** reported in **AIR 1997 SC 1005**, the Supreme Court

seriously deprecated such practice observing that review petition is not and should not be an attempt for hearing the matter again on merit. It was further held that unfortunately it has become recent time a practice to file such review petitions as a routine that too with change of counsel, which is not conducive to healthy practice of bar and the bar has the responsibility to maintain the salutary practice of profession.

13. Accordingly as regards the merits of the review application we have already applied our mind to the contentions of the counsel for appellant and it would be needles to remind that the review is not an appeal in disguise. The review jurisdiction of the court is well defined under order XLVII of Civil Procedure Code and it has been interpreted by the Apex Court and High Court in very many cases. In an old judgment of ***Thungabhadra Industries Ltd. Vs. Government of Andhra Pradesh*** reported in **AIR 1964 SC 1372** it has been laid in para 11 as follows:-

“.....A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out.....”

14. So it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. It will be just as well as be profitable to refer to the following observations of their Lordships of Supreme Court in the case of ***Parsion Devi and Ors. Vs. Sumitri Devi and others*** reported in **(1997) 8 SCC 715**.

“9. Under Order 47 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 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 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”.

15. However we are not unmindful to the fact that High Court being a constitutional court is not precluded from exercising the power of review to prevent miscarriage of justice or to correct palpable errors committed by it, however, it must be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the persons seeking or could not be produced by him at the time when the order was made.

16. Keeping the above principles in mind, in our considered opinion the order impugned dated 10.12.2021 does not require or call for any modification nor does it suffer from any error apparent on the face of it. The review petition as such being devoid of force has to be dismissed.

17. RVW 64 of 2022 in connection with **SAT 90 of 2020** thus stands dismissed. Connected application if any, also stands dismissed accordingly. Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree

(Soumen Sen, J.)

(Dr. Ajoy Kumar Mukherjee, J.)