

12.03.2025
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Ct.No.654
sdas

RVW 103 of 2024
with
CAN 1 of 2024
with
CAN 2 of 2024

Gorachand Mandal
Vs.
KMC & Ors.

Mr. Indranath Mitra
Mr. Pingal Bhattacharyya
Mr. Soumitra Ghosh
Mr. Rajdeep Sinha
...for the petitioner.

Mr. Arindam Bannerjee, Sr. Adv.
Mrs. Arpita Saha
Ms. Rituparna Chatterjee
Mr. Dhruva Behety
...for the respondents no. 5 to 11

Mr. Alak Kumar Ghosh
Ms. Manisha Nath
.... for the KMC

In Re : CAN 1 of 2024

The present memorandum for review, along with its connected applications, has been filed seeking a review of the judgment dated 6th October 2023, passed in WPA No. 2311 of 2021. It is a belated approach, and accordingly, an application for condonation of delay has also been filed along with the memorandum of review.

Since I invited learned advocates representing the respective parties to argue on merit, the application seeking condonation of delay being CAN 1 of 2024 is allowed.

RVW 103 of 2024
with
CAN 2 of 2024

Mr. Mitra, learned advocate representing the petitioner, argues that there is an error apparent on the face of the record in the judgment. Referring to certain paragraphs of the judgment, including paragraphs 4, 6, and a table inserted in paragraph 27, he contends that the permissible height of a building should be determined based on the width of the means of access.

He submits that initially, the width of the means of access to the building was 5.85 meters. However, after discussions between the Corporation officials and the landowners, a piece of land measuring 2.5 meters was donated, thereby increasing the width of the means of access to 8.35 meters.

Mr. Mitra argues that the permissible height of the building should have been determined based on the original width of the means of access, which was 5.85 meters. He submits that the Court, in passing the judgment, erred by failing to consider this aspect, resulting in an error in the judgment.

Mr. Banerjee, learned senior advocate representing the respondents, submits that this issue was raised and addressed in the judgment. The petitioner cannot claim any right to re-agitate the same issue under the guise of a review. In support of his contention, he refers to the decision reported

in *AIR 2017 SC 1432 (Sasi (D) through LRs vs. Aravindakshan Nair & Ors.)*.

Undeniably, Section 114 and Order 47, Rule 1 of the Code of Civil Procedure, 1908, prescribe the right and procedure for seeking a review. As per the explanation of Section 141 of the Code of Civil Procedure, 1908, this provision does not directly apply to writ proceedings. However, it is, nevertheless, axiomatic that this explanation does not affect the Court's inherent power to review its own orders passed under Article 226, as the plenary jurisdiction to prevent miscarriage of justice or to correct gross and palpable errors is vested in every Court. The Court inheres a power to review its judgment if the necessary grounds for review are met.

Admittedly, once a judgment is delivered, it cannot be altered thereafter. However, a Court may be invited to review its judgment only on three grounds: (i) the discovery of new and important evidence which, despite due diligence, was not within the petitioner's knowledge or could not have been produced at the time the order or judgment was passed; (ii) a mistake or error apparent on the face of the record; and (iii) any other sufficient reason.

It is a settled principle of law that the power of review should not be confused with the appellate power. An appellate court has the authority to correct all errors made by a subordinate court. Additionally, it is a well-established principle that the contentions raised and decided in the main proceedings cannot be reopened or re-agitated under the guise of a review petition, especially when the petitioner seeks a

review of the judgment on the ground of an apparent error on the face of the record.

However, it is important to note that there is a distinction when it comes to an error apparent on the face of the record. An error can be considered apparent on the face of the record only when it is easily identifiable without the need for elaborate argument.

In the present case, the petitioner seeks to argue that the Court made an erroneous decision by not considering that the permissible height of a building should be determined based on the actual width of the means of access. However, upon reviewing the relevant paragraphs of the judgment, it appears that, whether rightly or wrongly, this Court has already decided the issue. There is no scope for reconsideration of the same, and therefore, the petitioner cannot re-agitate the issue under the guise of a review. If the Court's observation regarding the determination of the permissible height based on the width of the means of access is erroneous, this Court cannot correct the decision while dealing with the review petition.

In view thereof, I am of the considered view that no interference is required in this review petition.

Accordingly, the review petition is dismissed.

In view of dismissal of the review petition, its connected application being CAN 2 of 2024 is also dismissed.

There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)