

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE RAVI KRISHAN KAPUR
AND
THE HON'BLE JUSTICE ARINDAM MUKHERJEE**

RVW No.283 of 2019
CAN 2 of 2019 (Old CAN 12040/2019)
In
FMA No. 874 of 2017

**SMT. MANISHA GIRI & ANR.
Vs.
THE STATE OF WEST BENGAL & ORS.**

For the petitioners	: Mr. Surajit Nath Mitra, Sr. Adv. Mr. Varun Kedia Mr. Avee Jaiswal Ms. Priyanka Prasad	<i>Advocates</i>
For the State	: Mr. Swapan Banerjee Mr. Tarak Karan	<i>Advocates</i>

Reserved on : 25.06.2025

Judgment on : 04.09.2025

Arindam Mukherjee, J.

1. The review applicant seeks review of a judgment dated 13th December, 2013 dismissing an intra-Court appeal arising out of an order dated 20th March, 2017 passed by a Learned Single Judge in WP No 1336(W) of 2017. The writ petition was filed challenging an order of cancellation of an allotment of land at Salt Lake.

2. The subject matter of dispute pertains to a plot of land being Plot No. 357 in Block AE, Salt Lake, measuring 4.4002 cottahs. Originally, the said plot was allotted to one Biva Rani Dassi (Debi) (since deceased) through the Deputy Secretary Government of West Bengal, Irrigation and Waterways Department sometime in or about the year 1971. Subsequently, a lease was executed in her favour on 3rd May 1974 on the condition that a residential building would be constructed on the given plot as per the sanction plan within a time frame provided thereunder. Pursuant to the above, a plan was also sanctioned by the Biddhannagar Municipal Corporation for construction of a three storied building on an application by the lessee. The said Biva Rani Dassi started the construction as per sanctioned plan but failed to complete the same. A show cause notice under clause 2(6)(a) of the lease dated 9th December, 1991 was also served upon her seeking an explanation for her long inaction and why such plot should not be resumed by the State authorities on her failure to build the house. Pursuant to the above, at the request of the said Biva Rani Dassi, an extension for a year was initially granted to complete such construction vide Memo No. 2146 dated 18th June, 1996.
3. In April 2001, Biva Rani Dassi applied for a 100% share transfer of the subject plot of land to her sole heiress, the review applicant. In view of the above, the Administrator, Biddhannagar caused an enquiry and found that construction had been made upto the plinth level inclusive of a mezzanine garage floor roof casting.

4. In 2013, upon the death of Biva Rani Dassi, the review applicant applied for mutation of the plot in her name. Another show cause notice was issued on 3rd July, 2014 for violation of clause 2(6)(a) of the lease and seeking explanation as to why such plot should not be resumed by the government. By a reply dated 23rd July, 2014 the review applicant prayed to the Land Manager for issuance of mutation in her favour assuring that the necessary residential constructions shall be completed within a year. Upon considering such prayer the respondent authority by a Memo dated 10th April, 2015, approved the mutation conditionally by granting the review applicant a period of six months from the date of issuance of the mutation order to complete construction of the residential building.
5. The review applicant, thereafter made an application to the respondent authority on 29th June 2016 for approval of a gift of the said land to her son, the review applicant no. 2, following which the respondent authority sought for the last mutation order and the building clearance certificate in order to approve the same. Although the review applicant no. 1 provided the mutation order, however failed to produce the building clearance certificate. Upon later departmental enquiries being made it was found that the review applicant failed to abide by the terms of the lease deed and the Memo dated 10th April, 2015 and that no further construction was made over the said plot. Accordingly, the respondent authority resumed the plot after issuing a resumption order by cancelling the allotment by Memo dated 28th December, 2016 and taking over the possession of

the plot on 8th February, 2017. The said re-entering and taking over of such possession was communicated by the Executive Engineer, Design Department, Department of Urban Development and Municipal Affairs, Government of West Bengal by Memo No. 62/D dated 22nd February, 2017.

6. In such circumstances, the memo dated 28th December 2016 was challenged by the review applicant in WP No. 1336(W) of 2017 wherein the order dated 20th March, 2017 came to be passed rejecting the prayer of the review applicant. The said order was thereafter challenged by filing an appeal wherein the Hon'ble Division Bench by an order dated 13th December, 2018 dismissed the appeal on merits and upheld the order of the Learned Single Judge. Thereafter, a Special Leave Petition was filed by the review applicant assailing the order dated 13th December, 2018 which was summarily dismissed on 13th August, 2019. After exhausting all possible remedies, the review applicant now prays for review of the order dated 13th December, 2018.
7. It is alleged by the review applicant that the impugned order fails to consider that the decision communicated by the memo dated 28th December, 2016 had been passed without application of mind and overlooking the fact that construction in terms of the mutation order dated 10th April, 2015 could not have been done without sanction of fresh building plan, which although applied for, was pending approved with the concerned municipal authority. In addition, construction of a three storied building could not have been

completed within a period of 6 months. It further alleged that the enquiry report dated 30th September, 2016 stating that the plot remains vacant without there being any construction made thereon is incorrect. The status report dated 19th September, 2001 stated that a construction was made upto the plinth level and a mezzanine garage floor roof casting had been completed and as such it could not have been alleged that the plot was vacant. It, however, appears that no further construction was made thereafter which has been explained by the review-applicants that the same could not be proceeded with due to non-sanction of the building plan by the municipality authority. It is further alleged that the impugned orders failed to consider that the review applicant had taken initiatives to obtain fresh sanction for construction, however, the said application was left pending which was not within the control of the review applicants. It is further alleged that the Hon'ble Single Judge erred in holding that the review applicant had engineered to transfer the land in favour of her son with an ulterior motive and that the predecessor in interest, the late Biva Rani Dassi on account of failure to complete the construction between 1974 and 2001 was not entitled to any sympathy.

8. It is further alleged that the respondent authority has been discriminating amongst lessees by citing some examples wherein similarly situated lessors were granted extension of time to complete the construction while it was referred in the case of the review applicants. The inaction on the part of the respondent authority was

also not considered in the impugned order. The basis of passing of the order of resumption was erroneous since a plinth level construction was already made on the plot. In addition, no show cause notice was issued to the review applicant as per clause 4 of the lease deed prior to issuance of the impugned notice of resumption nor was any opportunity of hearing granted to the review applicant in this regard. In support of such contention the review applicant cites the following judgments :

- 1) *(2019) 4 SCC 376 (Khoday Distilleries Ltd. & Ors. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. Kollegal)*
- 2) *(2000) 6 SCC 359 (Kunhayammed & Ors. v. State of Kerala & Anr.)*
- 3) *AIR 1950 FC 131 (Musammat Jamna Kuer v. Lal Bahadur & Ors.)*
- 4) *AIR 1954 SC 526 (Moran Mar Basselios Catholicos & Anr. v. Mar Poulouse Athanasius & Ors.)*
- 5) *AIR 1986 Cal. 106 (In re: Mahamaya Banerjee)*
- 6) *AIR 1989 MP 115 (State of Madhya Pradesh & Anr. v. Jaswantpuri & Ors.)*

9. It is contended by the respondent authorities that the review application is not maintainable in law since the same has been filed long after the dismissal of the Special Leave to Appeal (in short SLP) challenging the impugned order dated 13th December, 2018 and that such delay of 322 days is completely unexplained and the grounds and facts brought before this Court are frivolous, concocted and without any basis. It is further contended that the Department of Urban Development & Municipal Affairs, Government of West Bengal had resumed the plot after exercising due process of law by issuing a “Resumption Order” after cancelling the allotment of the said plot of land for violation of different clauses of the Lease deed dated 3 May,

1974. It is further submitted that the impugned order has reached its finality upon dismissal of the SLP filed by the review applicant before the Hon'ble Supreme Court by an order dated 13th August, 2019 and that no review can be entertained hence that application is liable to be dismissed. The respondents also contend that the plot and properties at Salt Lake city are all leasehold properties and are guided by terms and conditions of the lease agreement executed between the parties and such terms and conditions are the guiding principles of individual plot holders. Upon violation of such conditions, the Urban Development Department being the lessor is at liberty to take action against the lessee. Biva Rani Dassi was allotted the plot with the condition to make the necessary construction on the given plot within a time frame. However, the said predecessor in interest in 27 years of her occupation of the land i.e., between 1974 and 2001. The original lessee failed to complete such construction even between 2001 and 2003 when she passed away despite the respondent authority providing extensions on sympathetic grounds and allowing the permission to gift the plot to the review applicant no. 1. The predecessor in interest sought permission to transfer the said plot to the review applicant no. 1 with the hope that such construction shall be completed by the said review-applicant. Accordingly transfer permission was given however no deed of gift was executed by the predecessor in interest in favour of the review applicant. Thereafter repeated opportunities had been provided to the review applicant from time to time to complete such construction however the review

applicant failed to complete the same till the date of resumption. The predecessors in interest along with the review applicants have been in violation of the terms of the agreement and have received served notices issued by the authorities from time to time for such violation and as such it cannot be said that the respondent authorities acted contrary to law while passing the order of resumption.

10. The respondent No. 4, relies on the following judgments:

1. *W.P. 1336 (W) 2017 (Manisha Giri & Anr. Vs. The State of West Bengal & Ors.)*
2. *CAN 5596 of 2017 in FMA 874 of 2017 (Smt. Mahisha Giri & Anr. Vs. The State of West Bengal & Ors.)*

11. Before dealing with the rival contention as noted hereinabove the relevant provisions governing the review of a judgment and applicable provisions of limitation are set out hereunder for convenience:-

Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (in short, CPC) which stipulates the terms when a review application can be filed and is as follows:-

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 or 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.

(2) A party who is not appealing from a decree on Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the review applicant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Section 5 of Limitation Act, 1963 provides - . Extension of prescribed period in certain cases.— Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the review applicant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

12. Article 122 of the Limitation Act, 1963 provides for a 30 days' time period available to prefer a review of a judgment from the date of the judgment to be reviewed.

13. It is also now well-settled in view of the ratio laid down in Civil Appeal No. 2432 of 2019 (arising out of SLP (c) No. 490 of 2012) [*Khoday Distilleries Ltd. (Now Known as Khoday India Limited and Others) vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., Kollegal (Under Liquidation) represented by the Liquidator*] that a review petition can be filed and is maintainable in certain cases even after dismissal of the SLP. In the instant case after considering the provisions of Khoday Industries (Supra), we find that the same applied to the fact of this case. By exercising the discretion available under section 5 of the 1963 Act, we condoned the delay and admitted the review application for hearing. The respondent authorities did not challenge the said order condoning the delay and as such at the stage of final hearing, the respondent authorities are precluded from seeking dismissal of the review application on the ground of delay.
14. As a general principle, the scope of review is extremely limited and circumscribed. It has been repeatedly reiterated in different decisions both by the Hon'ble Apex Court and the High Court that the jurisdiction of review is not that of an appeal. An error which is not self-evident and has to be detected by a process of reasoning cannot be described as an error apparent on the face of the record. The Court while exercising its power of review cannot justify granting same reliefs nor can the same be sought for on the ground that had already been rejected. No new or fresh or additional material can also be introduced before the Court at this stage in seeking review of an order except new and important matter or evidence which after the exercise

of due diligence was not within the knowledge of the review applicant or at the time when the decree or the order was passed. In addition, unless there is a manifest error, an order cannot be reviewed in ordinary course.

15. Under Order 47 Rule 1 of CPC, an erroneous judgement cannot be reheard and remedied under the particulars laid down therein are satisfied. Review petitions serve specific functions and should not be mistaken for an appeal. A mere disagreement does not warrant review of judgement, unless there is an error or mistake or discovery of new evidence found which the Court failed to have been noticed in the case.

16. In *Union of India v. Sandur Manganese & Iron Ores Ltd & Ors*, (2013) 8 SCC 337, it has been held as follows:

“11. Order 47 Rule 1(1) of the Code of Civil Procedure, 1908 provides for an application for review which reads as under:

“1.Application for review of judgment.—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, or 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.”

“25. the error contemplated in the impugned judgment is not one which is apparent on the face of the record rather the dispute is wholly founded on the point of interpretation and applicability of section 11(2) and 11(4) of the MMDR Act. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and

answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction. Hence, in review jurisdiction, the court shall interfere only when there is a glaring omission or patent mistake or when a grave error has crept in the impugned judgment, which we fail to notice in the case”.

17. In *Koninklijke Philips N.V. v. Vivo Mobile Communication Co. Ltd.*, 2022

SCC OnLine Del 470 it has been held as follows:

*“13. It is also settled law that a review can by no means an appeal in disguise where an erroneous decision is reheard and corrected, as has been sought to be urged in the present matter. Throughout, the emphasis has been on the erroneous understanding of the pleadings of the parties, which, has resulted in erroneous conclusions, resulting further in erroneous decisions. A rehearing is not possible to correct all these “errors”. Such a rehearing and reappraisal of the material on record including pleadings, would fall within the scope of an appeal and not review. “Error” has to be an error apparent on the face of the record to attract the provisions of Order 47 Rule 1CPC and must be a patent error which alone can be looked into in review proceedings. This view has been taken by the Supreme Court in *Thungabhadra Industries Ltd. v. State of A.P.* [*Thungabhadra Industries Ltd. v. State of A.P.*, AIR 1964 SC 1372 : (1964) 5 SCR 174].*

*14. It would be useful to reiterate the summary of principles governing review petitions as laid down in *Kamlesh Verma v. Mayawati* [*Kamlesh Verma v. Mayawati*, (2013) 8 SCC 320 : (2013) 3 SCC (Civ) 782 : (2013) 4 SCC (Cri) 265 : (2014) 1 SCC (L&S) 96], which are as follows:*

Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

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

(iii) any other sufficient reason.

*The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [*Chhajju Ram v. Neki*, 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius* [*Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius*, AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [*Union of India v. Sandur Manganese & Iron Ores Ltd.*, (2013) 8 SCC 337 : (2013) 3 SCC (Civ) 797]*

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 negated."

18. The issues raised by the review applicant no. 1 pertaining to the non-issuance of the show cause notices, the requirement of a fresh building plan to be sanctioned within six month being necessitated by the approval of the mutation dated 10th April, 2015, pendency of the application of sanction of building plan, non-issuance of demand notices, pendency of application of gift from petitioner no 1 to petitioner no 2, submission of incorrect enquiry report dated 31st September, 2016 are all old and stale contentions which had been raised upto the Appellate Court and cannot be reopened at this stage of the proceeding in review jurisdiction.

19. There has been no other subsequent development neither has any new additional fact been brought on record by the review applicants as described hereinabove which can be considered by the Court to reopen the proceedings in exercise of review jurisdiction. The Trial Court and the Appeal Court have well considered all material facts

brought on record and have provided reasons for arriving at their to its conclusion. There is also no error apparent on face of record.

20. The review applicants had themselves asked for extension of time for a particular period which was granted at the first instance. At the time of seeking such extension the review applicants had considered all aspect and the only indicated the time period. It is to be presumed that the review applicants while asking extension of time to complete the construction had taken into consideration the fact that the building plan had to be obtained afresh. The action of the respondent authorities cannot be questioned on the ground that the building plan was kept pending by them when the extension of time as prayed for by the municipal authorities, review applicants was granted by the respondent authorities.
21. However, the only additional fact raised by the review applicant with regards to the other plots being CB-104, CK-231, AJ-13 and BD386 are not a subject matter of dispute in this case and cannot be a ground to interfere by way of review. The extension, if any given in respect of these plots are based on their peculiar facts. Only by providing the decision in absence of the records leading to such decision for extension cannot also be taken note of while exercising review jurisdiction as new and important matter or evidence which after exercise of due diligence was not within the knowledge of the review applicants even otherwise the conduct of the predecessor-in-interest of the review applicants and that of the review applicants have been considered by the Learned Single Judge and the Appellate

Court and it was found by both the Courts that the review applicants are not entitled to any extension. The extension of time, if any granted by the respondent authorities to some other persons does not entitle the review applicants to *ipso facto* get an extension when two Courts have after considering the case of the review applicants have denied them the relief.

22. So far as the judgments cited by the review applicants that a review is maintainable where there are factual mistakes in the judgment are concerned there is no dispute with such proposition. In the instant case the factual mistakes in the judgment as contended by the review applicants are concerned cannot warrant seeking review. In any event these grounds at the highest can be grounds of appeal to challenge the order of the Division Bench. The review applicants had challenged the order of the Division Bench by filing SLP. The Hon'ble Supreme Court did not entertain the SLP on the grounds assailed. The review applicants, therefore, cannot now be allowed to assail such grounds in review.
23. In view of the limited jurisdiction of the review Court and in view of the principles as enumerated hereinabove there is a no scope for this Court to interfere with the impugned order.
24. Moreover, the review applicant has exhausted all possible remedies and is only procrastinating matters. In view of the fact that the SLP has been dismissed by the Hon'ble Supreme Court, there is nothing left to seek review on the grounds urged. This Court cannot at this stage revisit facts of a case as an Appellate Court by way of a review

application, in such a circuitous manner unless there lies manifest error on the face of the order or results in miscarriage of justice.

25. In view of the above, there is nothing in the impugned order which warrants interference by this Court.

26. Accordingly, RVW No.283 of 2019 in FMA No. 874 of 2017 stands dismissed.

27. In view of the order passed in RVW No. 283 of 2019, the connected application being CAN 2 of 2019 (Old CAN 12040 of 2019) stands disposed of.

28. Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

I agree,

(Ravi Krishan Kapur, J.)

(Arindam Mukherjee, J.)