VERDICTUM.IN

2024:AHC:165810-DB
A.F.R.

Judgment reserved on 01.10.2024
Judgment delivered on 18.10.2024

Case :- CIVIL MISC REVIEW APPLICATION No. - 4 of 2023
Applicant :- Chetram @ Mintu and 4 others
Opposite Party :- State of U.P. and 3 others
Counsel for Applicant :- Ashish Mishra, Jai Shanker Misra
Counsel for Opposite Party :- C.S.C.,Kaushalendra Nath Singh

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Piyush Agrawal,J.

Civil Misc. Delay Condonation Application No.1 of 2023

1. Learned counsel for the respondents states that he is not inclined to file an objection to the delay condonation application and he has no objection in case delay condonation application is allowed.

2. For the reasons stated in affidavit filed in support of delay condonation application, as the same constitutes sufficient cause for condoning delay in filing review application, the delay condonation application is allowed. The review application is treated to have been filed well within time.

Review Application

1. Heard Sri Jai Shanker Misra, learned counsel for the applicants/petitioners and Sri Kaushalendra Nath Singh, learned counsel for the respondent/NOIDA.

2. The instant review application is preferred to review the judgment and order dated 22.04.2022 passed by the Division Bench in Writ C No.10106 of 2022 (Chetram Chauhan @ Mintu and others vs. State of U.P. and 3 others).

Factual Matrix

3. Record reflects that the applicants-petitioners were owners with transferable right of Khasra No.422M/0.9700 hec., 428M/0.6410 hec. and 570M/0.7460 hec. situated in Village Sadarpur, Tehsil Dadri, District Gautam Buddh Nagar. The State Government vide notifications dated 30.03.2002 and 28.06.2003 had acquired the land

VERDICTUM.IN

of different villages of NOIDA and Greater NOIDA including the land of petitioners in Khasra No.422 and 428. The petitioners have invoked the writ jurisdiction for a direction commanding second respondent/Chief Executive Officer, New Okhala Industrial Development Authority (NOIDA), Gautam Buddh Nagar to pay compensation @ Rs.44,000/- per square meter in place of Rs.22,000/- per square meter for 5% additional abadi land in respect of the acquired land of petitioners i.e. Khasra Nos.422M & 428M situated in Village Sadarpur, Pargana & Tehsil Dadri, District Gautam Buddha Nagar in the light of the judgment and order dated 21.10.2011 passed by the Full Bench of this Court in **Gajraj Singh & others Vs. State of U.P. & others**[1]. A Division Bench vide judgment and order dated 22.04.2022 had dismissed the writ petition. For ready reference, the judgment and order dated 22.04.2022 is quoted herein under:-

> "1. The prayer made in the present petition is for a direction to the respondent no.2 to pay compensation @ Rs. 44,000/- per square meter in place of Rs. 22,000/- per square meter for 5% additional abadi land with reference to the acquisition thereof in Village - Sadarpur, Pargana & Tehsil - Dadri, District - Gautam Buddha Nagar in terms of the judgement of the Full Bench of this Court in Gajraj Singh & others Vs. State of U.P. & others reported in 2011 (11) ADJ 1 (FB).
>
> 2. At the very outset, learned counsel for the respondents pointed out that challenge to the acquisition pertaining to land of Village - Sadarpur vide same notification was considered by the Full Bench of this Court in Gajraj Singh (supra) and the writ petitions were dismissed. Hence, the petitioners cannot be granted any benefit in terms thereof.
>
> 3. To this, learned counsel for the petitioners submitted that only three writ petitions pertaining to Village - Sadarpur were dismissed and not all of them.
>
> 4. We are not impressed with this argument. Whatever writ petitions, pertaining to acquisition of land in Village - Sadarpur vide same notification were listed before the Full Bench of this Court, the same were specifically dismissed. That does not mean that any further relief, which was not granted to the writ petitioners before the Full Bench of this Court, could be granted to any other land owners.
>
> 5. For the reasons stated above, we do not find any merit in the present petition. The same is, accordingly, dismissed."

<u>Submission of the review applicants/petitioners</u>

4. Learned counsel for the applicants-petitioners vehemently submitted that earlier the petitioners had preferred Writ Petition No.44 of 2012 (Raj Kumar and others vs. State of UP and others) and the same was disposed of by the Division Bench vide an order dated

1. 2011 (11) ADJ 1 (FB)

VERDICTUM.IN

04.01.2012 in terms of the Full Bench judgement passed in Gajraj Singh's case (supra). In this backdrop, it was pressed that once the Division Bench had already disposed of the said writ petition in terms of judgement of Full Bench in Gajraj Singh's case (supra) then the applicants-petitioners are entitled to get full compensation @ 64.7% and admittedly, the same has been accorded to the petitioners.

5. Learned counsel for the applicants further submitted that while dismissing the writ petition, the Division Bench had considered the benefit of additional compensation in the light of Full Bench judgment in **Gajraj Singh**'s case (supra), which has already been accorded to the petitioners by the NOIDA. He submitted that mainly three writ petitions pertaining to Village Sadarpur were considered and dismissed by the Full Bench in Gajraj Singh's case (supra) and therefore, it cannot be presumed that no benefit had been extended qua the land, which was acquired in Village Sadarpur. In support of his submission, he has placed reliance on the judgement and order passed in **Pratap Singh vs. State of UP and others**[2]. The operative portion of the order is as under:-

> "In result, the writ petitions included in Group-A, Group-B and Group-C are decided as follows:-
>
> (i)The Writ Petition Nos.41833 of 2011, 49068 of 2011, 50654 of 2009, 56821 of 2009, 63443 of 2009 and 51115 of 2011 of Group-A, relating to village Devla, district Gautam Budh Nagar are allowed and the notifications dated 26th May, 2009 and 22nd June, 2009 and all consequential actions are quashed. The petitioners shall be entitled for restoration of their land subject to deposit of compensation which they had received under agreement/award before the authority/Collector. Rest of the writ petitions of Group-A are disposed of in terms of direction No.3 and other directions in earlier judgment and order dated 21st October, 2011 (Gajraj and others vs. State of U.P. and others) reported in 2011(11) ADJ.
>
> (ii)All the writ petitions of Group-B are dismissed as barred by laches.
>
> (iii)The writ petitions of Group-C relating to village Bisrakh Jalalpur, district Gautam Budh Nagar are disposed of in terms of direction No.3 and other directions in earlier judgment and order dated 21st October, 2011 (Gajraj and others vs. State of U.P. and others) reported in 2011(11) ADJ.
>
> All the writ petitions are decided accordingly. No costs."

6. Learned counsel for the applicants next submitted that while passing the order in Pratap Singh's case (supra) the Division Bench

2. Writ C No.6022 of 2008 decided on 17.02.2012

VERDICTUM.IN

had taken note of list of Group-A cases relating to different villages of NOIDA and Greater NOIDA and also taken note of item no.211, Village Sadarpur, wherein the notification under Section 4 dated 30.03.2002 and the notification under Section 6 of the Act dated 28.06.2003 were mentioned and the notification of land of petitioners covered the benefit as per direction no.3 and other directions in the earlier judgment passed in Gajraj Singh's case (supra). In support of his submission, he had placed reliance on item no.7 of 191st Board Meeting of NOIDA Authority dated 21.12.2016, by which the Board had resolved to pay the equivalent amount of the developed land of additional 5% abadi plot of the tenure holder. Even, the said relief is also liable to be accorded in the light of the 191st Board meeting of the NOIDA dated 21.12.2016. The Division Bench without considering the aforementioned grounds had rejected the claim of the petitioners and in case the order dated 22.04.2022 is not reviewed, the applicants-petitioners would suffer irreparable loss and injury.

Submission of counsel for the respondent/authority

7. The review application was resisted by Sri Kaushalendra Nath Singh, learned counsel for the respondent authority on the ground that in the instant matter, admittedly the disputed plot had been purchased by the NOIDA authority through mutual negotiation. The sale deeds were executed on 28.11.2001 and the same was registered by the Registrar on 30.07.2002. The applicants were well conversant with the fact, that they had no right to press any relief in the light of the Full Bench judgement in Gajraj Singh's case (supra). The applicants-petitioners tried to get the benefit of the date of registration by the Registrar dated 30.07.2002 but in fact, the same was not the date of the sale deed. The sale deed had already been executed way back on 28.11.2001 and the entire sale consideration was also passed on to the petitioners on the said date. The said fact is also reflected from the sale deed itself, wherein it had been acknowledged that the entire compensation had been accepted by the petitioners in the month of November, 2001. In support of his submission, he had also placed reliance on the sale deed, which had also been brought on record by

VERDICTUM.IN

the petitioners.

8. Sri Kaushalendra Nath Singh further raised an objection that the additional compensation was paid to only those persons, whose land were acquired by means of notifications, which were under challenge before the Full Bench in Gajraj Singh's case (supra). Initially, the petitioners tried to mislead the Court that their land were subject matter of challenge in the preliminary notification i.e. Section 4 of the Act but in the final notification i.e. under Section 6 of the Act, the said land was not included. Therefore, the land of the petitioners were never acquired and the same were taken through sale deeds, which were executed on 28.11.2001 and the entire sale consideration was handed over on the said date. Even while filing the earlier writ petition, the petitioners claimed that their land were also acquired by means of notification and succeeded in obtaining disposal order in the light of judgement passed in Gajraj Singh's case (supra) and later on, the petitioners had instituted the said writ petition with material concealment. Even on the basis of the earlier order passed in Writ C No.44 of 2012, once it was brought into the notice of the NOIDA Authority that the petitioners were not entitled for any additional compensation in the light of the judgement passed in Gajraj Singh's case (supra) then the recovery notice has been issued for return of the additional compensation, which was wrongly collected by the petitioners by giving wrong facts.

9. Sri Kaushalendra Nath Singh vehemently contended and placed reliance on 180th Board meeting dated 29.11.2013, wherein the decision was taken to accord enhanced compensation of 64.7% to the farmers keeping in mind the interest of the tenure holders whose land were acquired between 30.03.2002 to 17.03.2009. In the instant matter, admittedly the notification under Section 4 was issued on 30.03.2002 and the notification under Section 6 of the Act was issued on 28.06.2003 but prior to it, the petitioner's land was already purchased by the NOIDA Authority in the month of November, 2001. Even the petitioners are not entitled to get the additional compensation of 64.7% or 5% developed land in the light of the Full

VERDICTUM.IN

Bench judgement in Gajraj Singh's case (supra). The judgment and order dated 22.4.2022 passed by the Division Bench is well considered and same does not fall within the parameters of review as there is no infirmity in the same, as such review petition is clearly not maintainable.

10. He further placed reliance on the judgements passed by the Apex Court in **Kanwar Raj Singh (D) through Legal Representatives vs. GEJO (D) Through Legal Representatives and others**[3] and **Ram Saran Lall v. Domini Kuer**[4]**,** wherein it had been held that Section 47 of the Registration Act, 1908 applies to a document only after it has been registered, and it has nothing to do with the completion of the sale when the instrument is one of sale.

Analysis by the Court

11. After respective arguments have been advanced, the parameter provided for exercise of Review jurisdiction is being looked into.

12. The review application can be allowed only on (1) discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the person seeking review, or could not be produced by him at the time when the order was made, or (2) when some mistake or error on the face of record is found, or (3) on any analogous ground. But review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court.

13. In the case of **Shivdeo Singh v. State of Punjab**[5], Hon'ble Apex Court took the view that there is nothing under Article 226 of the Constitution of India, which precludes 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. It was held that every Court including High Court inheres plenary jurisdiction, to prevent miscarriage of justice or to correct grave and palpable errors

3. (2024) 2 SCC 416
4. AIR 1961 SC 1747
5. AIR 1963 SC 1909

VERDICTUM.IN

committed by it.

14. Hon'ble Apex Court in the case of **A.P. Sharma v. A.P. Sharma**[6], has cautioned that power of review of High Court is not the same as appellate powers and review on the ground that certain documents have not been considered, which formed the record. Hon'ble Apex Court, in the case of **Meera Bhanja v. Nirmla K. Chaudhary**[7], has taken the view that review must be confined to error apparent on the face of record, error must be such as would be apparent on mere looking without any long drawn process of reasoning, and reappraisal of evidence on record for finding out error would amount to exercise of appellate jurisdiction, which is not at all permissible.

15. In the case of **Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale**[8], Hon'ble Supreme Court has made the following observations in connection with an error apparent on the face of the record :-

> "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.
>
> In our view the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has overstepped its jurisdiction under Order 47, Rule 1, C.P.C. By merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position indicated by us earlier. In substance, the review Bench has re appreciated the entire evidence, sat almost as Court of appeal and has reversed the findings reached by the earlier Division Bench Even if the earlier Division Bench findings regarding C.S. Plot No. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate Court. Learned counsel for the respondent was not in a position to point out how the reasoning adopted and conclusion reached by the Review Bench can be supported within the narrow and limited scope of Order 47, Rule 1, C.P.C. Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It could not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Only on that short ground, therefore, this appeal is required to be allowed. The final decision dated 8th July, 1986 of the Division Bench dismissing the appeal from appellate

6. 1979 (4) SCC 389

7. 1995 (1) SCC 170

8. AIR 1960 SC 137

VERDICTUM.IN

> decree No.569 of 1973 insofar as C.S. Plot No. 74 is concerned as well as the review judgment dated 5th September, 1984 in connection with the very same plot, i.e. C.S. Plot No. 74 are set aside and the earlier judgment of the High Court dated 3rd August, 1978 allowing the Second Appeal regarding suit plot No. 74 is restored. The appeal is accordingly allowed. In the facts and circumstances of the case, there will be no order as to costs."

16. In **Parsion Devi and others v. Sumitri Devi and others**[9], Hon'ble Supreme Court has taken the view that review proceeding has to be strictly confined to the ambit and scope of Order 47, and therein the two earlier judgments referred to above have been relied upon. Again in **Smt. Meera Bhanja v. St. Nirmala Kumari Choudhary**[10], Hon'ble Supreme Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

17. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is 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 Code of Civil Procedure. 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 has a limited purpose and cannot be allowed to be "an appeal in disguise."

18. Hon'ble Apex Court, in the case of **Lily Thomas v. Union of India**[11], after considering the dictionary meaning of word "review" has taken the view that power of review can be exercised for correction of mistake and not to substitute a view. Such powers can be exercised within the limits of the statute, dealing with exercise of power; the review cannot be treated as an appeal in disguise, and mere possibility of two views on the subject is not a ground of review.

9. 1997 (8) J.T. SC 480

10. 1985 (1) SCC 170

11. AIR 2000 SC 1650

VERDICTUM.IN

19. In **Subhash Vs. State of Maharastra & another**[12], the Apex Court emphasized that Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review. In **State Haryana v. Mohinder Singh**[13], the Apex Court disapproved the judgment of High Court, wherein earlier writ petition was disposed of by High Court being infructuous and giving some directions, and subsequent to the same, review was sought, which was allowed, same was clearly termed to be overstepping of jurisdiction, and amounting to giving of one more chance of hearing.

20. In the case of **Union of India v. B. Valluvar**[14], Hon'ble Apex Court has again considered the parameters of review jurisdiction of High Court and held that same shall be exercised within the limitations as provided under Section 114 read with Order 47 Rule of C.P.C., and without recording finding as to there existed error apparent on the face of the record, merit cannot be gone into. Hon'ble Apex Court in the case of **State of Haryana and others v. M.P. Mohila**[15], has taken the view that in the garb of clarification application, recourse to achieve the result of review application, cannot be permitted.

21. In the case of **Bhagwant Singh Vs. Deputy Director of Consolidation & another**[16], this Court rejected the review application filed on a ground which had not been argued earlier because the counsel, at initial stage, had committed mistake in not relying on and arguing those points, and held as under:-

> "It is not possible to review a judgment only to give the petitioner a fresh inning. It is not for the litigant to judge of counsel's wisdom after the case has been decided. It is for the counsel to argue the case in the manner he thinks it should be argued. Once the case has been finally argued on merit and decided on merit, no application for review lies on the ground that the case should have been differently argued."

12. AIR 2002 SC 2537

13. JT 2002 (1) 197

14. 2006 (8) SCC 686

15. 2007 (1) SCC 457

16. AIR 1977 All. 163

VERDICTUM.IN

Conclusion

22. On the touchstone of the dictum noted above, the review is permissible only when there is error apparent on the face of record i.e. error should be grave and palpable, and the error must be such as would be apparent on mere looking of record, without requiring any long drawn process of reasoning, and reappraisal of entire evidence for finding the error, as same would amount to exercise of appellate jurisdiction. Further, the review lies only on the grounds mentioned in Order 47, Rule 1 read with Section 141 CPC. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in the said provision of C.P.C.

23. The applicants/petitioners could not demonstrate anything to satisfy the Court on the three grounds of review as mentioned in the earlier part of this judgement, hence the judgement dated 22.4.2022 does not fall under the parameters of review. It is by now settled that neither review court can examine the merit of the judgment as an appellate court nor in the garb of review petition, re-hearing of the matter can be permitted by this Court.

24. Perusal of judgment under review dated 22.4.2022 passed by this Court shows that each and every aspect of the matter has been considered by the Division Bench and thereafter, the writ petition in question was dismissed. No case is made out to review the judgment passed on 22.4.2022.

25. Consequently, the review application is dismissed.

Order Date :-18.10.2024
RKP

Digitally signed by :-
RAKESH KUMAR PATEL
High Court of Judicature at Allahabad