(2015) 04 KAR CK 0305

In the Karnataka High Court

Case No : Review Petition No. 1261/2014 and Review Petition No. 68 of 2015

Allegowda and Others APPELLANT

Vs

Special Deputy Commissioner, Bangalore Urban District and Others RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2015) 04 KAR CK 0305

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : R.L. Patil, Senior Counsel for Abhinay P. Patil, for the Appellant; Prathima Honnapura, HCGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—Smt. Prathima Honnapura, the learned High Court Government Pleader is directed to take notice for the respondents.

2. The petitioners are seeking the review of the order, dated 29.11.2012 passed by this Court in W.P. Nos. 39393-39394/2011.

3. Sri R.L. Patil, learned Senior Counsel appearing on behalf of the petitioners submits that against the said order the petitioners had indeed filed W.A. No. 564/2013, which however came to be withdrawn with the liberty to file the review petition. The said order, dated 25.9.2014 of the Division Bench is produced as Annexure-B.

4. Appreciating that the writ appeal was filed against the order, dated 29.11.2012 and that it was pending consideration for over one year and that the review petition is filed within two months from the date of the disposal of the writ appeal, I condone the delay of 679 days in filing this review petition.

5. The learned Senior Counsel submits that there may not be any error apparent

on the face of the record; but it may be latent. He submits that the provisions contained in Order XLVII Rule 1 confer discretion on the Court to review the order, even if there is no apparent error on the face of the record, to do justice. He submits that the revenue authorities have to exercise their power of initiating the appropriate proceedings within the reasonable time. The entries, which are 30-40 years old, cannot be reversed or deleted on the whims of the revenue authorities. He brings to my notice, this Court''s order, dated 29.1.2015 passed in W.P. No. 35100/2011 and requests that the order, dated 29.11.2012 be reviewed for bringing it in conformity with the order dated, 29.1.2015.

6. The learned Senior Counsel has also relied on the following authorities:

(i) The State of Gujarat Vs. Patil Raghav Natha and Others, AIR 1969 SC 1297 : (1969) 2 SCC 187 : (1970) 1 SCR 335

(ii) Mansaram Vs. S.P. Pathak and Others, AIR 1983 SC 1239 : (1983) 2 SCALE 1027 : (1984) 1 SCC 125 : (1984) 1 SCR 139

(iii) Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, (1997) 6 SCC 71

(iv) Shri Santoshkumar Shivgonda Patil and Others Vs. Shri Balasaheb Tukaram Shevale and Others, (2009) 13 JT 69 : (2009) 12 SCALE 278 : (2009) 9 SCC 352 : (2009) 14 SCR 1173 : (2009) 9 UJ 4126

(v) Sri Anna Rao and Others Vs. Sri Gundareddy and Others, (1997) ILR (Kar) 1998

(vi) M.N. Venkateshaiah Vs. The State of Karnataka and Others, (2005) ILR (Kar) 5084 : (2005) 6 KarLJ 452 : (2006) 1 KCCR 205

(vii) WA No. 8643/1996 - M/s. Saroj Agencies v. The State of Karnataka and another.

7. The submissions of the learned counsel have received my thoughtful consideration. As held by the Apex Court in the case of Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137 : (1960) 1 SCR 890 , 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.

8. It is also profitable to refer to the Apex Court''s judgment in the case of S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, AIR 2008 SC 719 : (2007) 5 CTC 881 : (2008) 1 JT 102 : (2007) 12 SCR 1050 . It is held therein that an error contemplated under Rule 1 of Order XLVII of C.P.C. for the permissibility of review must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be the one, which must be manifest on the face of the record. If the error is so apparent that without further investigation or enquiry only one conclusion can be drawn in favour of the applicant, the review will lie. Under the guise of review, the parties

are not entitled to the rehearing of the same issue.

9. In the case of Haridas Das Vs. Smt. Usha Rani Banik and Others, AIR 2006 SC 1634 : (2006) 2 CTC 321 : (2006) 3 JT 526 : (2006) 3 SCALE 287 : (2006) 4 SCC 78 : (2006) AIRSCW 1771 : (2006) 3 Supreme 125 , it is held that the review provisions do not postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict.

10. In the case of Harinagar Sugar Mills Ltd. and Another Vs. State of Bihar and Others, (2006) 1 SCC 509 , the Apex Court has considered the view that the appellants could not be allowed to reagitate the points which had already been decided by the Court.

11. As held by the Apex Court in the case of Dr. Subramanian Swamy Vs. State of Tamil Nadu and Others, AIR 2015 SC 460 : (2014) AIRSCW 6893 : (2014) 1 JT 590 : (2014) 1 SCALE 79 : (2014) 5 SCC 75 in view of the explanation to Rule 1 of Order 47 CPC also, even an erroneous decision cannot be a ground for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment or order cannot be disturbed.

