

(2016) 10 KAR CK 0028

In the Karnataka High Court

Case No : Review Petition No. 400 of 2016

Commissioner, Bangalore Development Authority

APPELLANT

Vs

Mruthyunjaya B. Thimma Reddy

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Limitation Act, 1963 — Section 5

Citation : (2017) 1 AirKarR 388

Hon'ble Judges : Mr. Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : Sri. Bipin Hegde, Advocate, for the Petitioner; Sri. K. K. Vasanth, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J. - The petitioner is seeking the review of the order, dated 6.1.2015 passed in W.P.No. 1713/2014. The said writ petition was filed by the respondent with the grievance that his land measuring 13 guntas at Survey No.9 of Ramasandra Village, Kengeri Hobli, Bangalore South Taluk is utilized by the review petitioner for the formation of the roads without compulsorily acquiring the said land and without paying any compensation thereof. The writ petition came to be disposed of recording the submissions on behalf of the review petitioner that the writ petitioner's land was indeed utilized for the formation of the road and that as per its resolution on item No.4/2012, the persons whose lands are not acquired and who are not given any compensation are entitled to the allotment of alternative property.

2. The writ petition was disposed of with the following order:

"7. Recording the submission of the learned counsel, I dispose of this petition with a direction to the respondent BDA to give alternative property/properties to the petitioner following its resolution on item No.4/2012 as expeditiously as possible and in any case within an outer limit of eight weeks from the date of the

production of the certified copy of today's order."

3. Sri Bipin Hegde, the learned counsel for the review petitioner submits that the resolution on item No.4/2012 is withdrawn on 2.6.2016. He submits that the Government has also passed the order on 15.4.2016 not to give an alternative site but to give only the value of the utilized land. He submits that this Court, by its order, dated 26.7.2012 passed in W.P.No. 45695/2011 has given the directions either to give the alternative land or to give the monetary compensation equivalent to the value of the land. As the earlier order is not noticed in, the later order, the review of which is sought, he submits that there is an error apparent on the face of the record.

4. Sri. K. K. Vasanth, the learned counsel for the respondent (writ petitioner) submits that this review petition is filed only to overcome the contempt petition filed by the respondent. He submits that the review petitioner has taken four adjournments in the contempt proceedings. He submits that the order, dated 6.1.2015 is sought to be nullified by seeking its review.

5. There is a delay of about 1 year 7 months in filing the review petition. In the affidavit filed in support of the I.A. for the condonation of delay, it is not even mentioned when the copy of the order, dated 6.1.2015 was received by the review petitioner, what action is taken to comply with the order or to challenge it. The averments contained in paragraph No.5 of the affidavit are vague and hence they do not make out a case for the condonation of delay of 564 days. Paragraph No.5 of the affidavit reads as follows:

"5.1 state that there is delay of 564 days in filing the above appeal. The reason for the delay is after obtaining the certified copy the same was forwarded to legal section along with file pertaining to the above petition to get legal opinion & approval to file an appeal. I state that the Legal section after going through the file and after discussion and after obtaining legal opinion the legal section sent the file to obtain the approval from the commissioner. I state that since the Commissioner was changed the Authority was not get the approval in time and after obtaining the approval from the new commission immediately we have issued the letter to our Legal Counsel to file petition before the Hon'ble High Court of Karnataka. For the said reason the delay is caused in preferring the above petition. I state that the delay is caused is only bona fide and not intentional. Hence it is just and necessary to allow the accompanying application."

6. Even if all the afore-extracted averments are taken to be true, no case is made out for condoning the delay of 564 days in filing this review petition. This petition is therefore liable to be rejected on the ground of delay.

7. Nonetheless let me examine the review petition. It is trite that 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. In saying so, I am fortified by the Apex Court's judgment in the case of Satyanarayan Laxminarayan Hegde and others

v. Mallikarjun Bhavanappa Tirumale, reported in AIR 1960 SC 137.

8. In the case of Harinagar Sugar Mills Ltd. and another v. State of Bihar and others, reported in (2006) 1 SCC 509, it is held that the review can be granted only if there was a mistake apparent on the face of the record; a party cannot be allowed to re-agitate the points, which had already been decided by the Court.

9. In the case of S. Bagirathi Ammal v. Palani Roman Catholic Mission, reported in (2009) 10 SCC 464, the Hon"ble Supreme Court has held that an error contemplated under Rule 1 Order 47 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.

10. That the decision rendered in W.P. No.45695/2011 was not brought to the notice of the Court is also no ground for seeking the review of the order. The Apex Court has this to say in paragraph No. 13 of its judgment in the case of Haridas Das v. Smt.Usha Rani Banik and others, reported in AIR 2006 SC 1634:

"13. In order to appreciate the scope of a review, Section 114 of the Civil Procedure Code has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit." The parameters are prescribed in Order 47 of the Civil Procedure Code and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason." The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them 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"

11. Following the decisions to which the elaborate references are made herein above and not finding any error, much less an error apparent on the face of the record, I decline to review the order.

12. The subsequent events also do not warrant the review of the order. As on the date of the passing of the order, dated 6.1.2015, the resolution on item No.4/2012 was very much in force. Its subsequent withdrawal cannot take away or extinguish the rights of the writ petitioner. In the result, both the I.A. for the condonation of delay and this review petition are dismissed.

13. At this juncture, Sri. Bipin Hegde prays for the enlargement of time for

complying with this Court's order, dated 6.1.2015. In the absence of any application for the extension of time, such request cannot be considered. If extension of time is sought by making appropriate application, it can be considered.