
(2019) 03 CHH CK 0028
In the Chhattisgarh High Court
Case No : REVP No. 7 Of 2019

Durga Devi Gupta

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 05-03-2019

Acts Referred:

High Court Of Chhattisgarh Rules, 2007 — Rule 90(2)
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 CHH CK 0028

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J

1. The matter is taken up for consideration in the chamber under provisions of sub-rule (2) of Rule 90 under Chapter VI of the High Court of Chhattisgarh Rules, 2007.

2. The Review-petitioner (in short the petitioner) seeks review of the order dated 29.10.2018 passed in WPC No.2353/2018 on the ground that without due procedure the Corporation has closed the road in the name of handing over the land to the petitioner, just to avoid compensation; the petitioner came to know that during last 20 years the neighbours have erected gates in their houses and are using it for transportation; and the local persons and students are using the same as public road. In fact after lapse of 2 decades the land in question has become useless for the petitioner.

3. After going through the record it is manifest that on 10.09.2018 in presence of learned counsel for the petitioner, learned State counsel and learned counsel for the Corporation this Court passed the following order in WPC No.2353/2018:-

"As submitted by Mr. Agarwal, learned counsel for the Corporation, the Municipal Corporation is permitted to remove the road from the petitioner's land and hand

over possession of the same to the petitioner.

Let it be done by the Corporation within a month, failing which, this Court shall draw contempt action against the Commissioner, Municipal Corporation, Raipur.

Both the parties are permitted to make videography of the entire operation."

Thereafter, when the matter was taken up on 29.10.2018, which is sought to be reviewed herein, all the learned counsels for the respective parties were present and on the said date learned counsel for the petitioner made the following submission at Para 1:-

"1.Learned counsel for the petitioner would submit that in view of the fact that the respondent Corporation has complied with the undertaking submitted on 10.09.2018 and has handed over the subject land to the petitioner, nothing survives in this writ petition ."

On the basis of the above statement, the writ petition was dismissed as having become infructuous.

4. On consideration of the above-stated grounds, which are in the nature of taking liberty to re-argue the writ petition are unsustainable in the eyes of law. The petitioner cannot be allowed to commit a volte-face and take up new pleas in review petition.

5. There is no other ground pointed out by the petitioner showing any manifest error on the record and has not further brought into the notice, any new facts, which could not be produced earlier despite diligent efforts made by the petitioner. It is well settled principles of law that the 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 of the Code of Civil Procedure. Even in exercise of review jurisdiction by the High Court under Article 226 of the constitution, the petitioner has not produced any ground for review.

6. It appears that the petitioner by presentation of this review petition seeks an opportunity to argue the entire case afresh on merits under the garb of the review petition, which is not permissible and tenable in law.

7. It is well settled principle of law that under the garb of review petition, the petitioner should not be permitted to argue the entire case afresh, which would amount to convert the review petition into an appeal and the same is not sustainable in law. (See: Meera Bhanjan v. Smt. Nirmal Kumar Chowdhary, AIR 1995 SC 455. Lily Thomas etc. v. Union of India and others, AIR 2000 SC 1650, Ajit Kumar Rath v. State of Orissa and others, AIR 2000 SC 85, Government of T.N. & Others v. M. Ananchu Asari and others, (2005) 2 SCC 332, and Kerla State Electricity Board v. Hitech Electrochemicsm & Hydropower Ltd. And others, (2005) 6 SCC 651.

8. As a sequel, the review petition, sans substratum is liable to be and is hereby dismissed.