

(2015) 03 TP CK 0025
In the Tripura High Court
Case No : Rev. Pet. No. 04 of 2014

Fortuna Agro Plantation Ltd.

APPELLANT

Vs

S. Gupta

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 1(1), Order 47 Rule 47, 114, 22(3)(f)
Constitution of India, 1950 — Article 181, 182, 226

Citation : (2015) 03 TP CK 0025

Hon'ble Judges : S.C. Das, J.

Bench : Single Bench

Advocate : D.K. Biswas, M. Bose, O.P. Jhunjunwala and G.K. Nama, for the Appellant; K.N. Bhattacharjee, Kohinoor N. Bhattacharjee, D.C. Nath and Y. Taneja Bhattacharjee, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—By filing this application the petitioner sought review of order dated 06.02.2014 passed in Cont. Cas(C) No. 09 of 2011.

2. The petitioner prayed for the following relief:-

"In the facts and circumstances stated hereinabove, the petitioner humbly submits that the order dated 6.2.2014 passed in contempt case being No. Contempt Case No. 09 of 2011 be reviewed and appropriate orders and/or directions be passed requiring the respondent authorities in W.P.(C) 228 of 2010 to acquire and issue notification for acquisition of land for 25.42 acres of land within 90 days from the date of order, in terms of report and map dated 23.05.2008 which has been said to be authentic vide report dated 11.01.2010 forwarded by SDM on 12.01.2010 to LA Collector." 3. Heard learned counsel, Mr. D.K. Biswas along with learned counsel, Mr. M. Bose and Mr. O.P. Jhunjunwala for the petitioner and learned senior counsel, Mr. K.N. Bhattacharjee, assisted by learned counsel, Mr. D.C. Nath and Mr. Kohinoor N. Bhattacharjee for the

respondent.

4. Short fact necessary for disposal of this review application may be stated thus-

The petitioner filed W.P.(C) No. 228 of 2010 under Article 226 of the Constitution of India before this Court which was disposed of by a consenting order dated 17.01.2011 and the operative part of that order reads as follows:-

"In view of above, as agreed to by the learned counsel for both the parties, it is directed that a joint survey be conducted to find out, if any, the land belonging to the writ petitioner, used by the Government, beyond the already acquired land, for construction of I.B.B. road and if so, appropriate action be initiated for acquiring the land as per law." 5. Alleging that the order has not been complied with the petitioner preferred Contempt Cas(C) No. 09 of 2011 and by impugned order dated 06.02.2014 the contempt matter was disposed of with the following observations:-

"12. In the present case, the order dated 07.01.2011, as it clearly reads, a direction was given to both the parties to have a joint survey, initiative to be taken by the respondent (alleged contemnor). Joint survey accordingly was conducted. While at the initiative of the respondent (alleged contemnor), a joint survey was conducted, may be the petitioner was dissatisfied with the joint survey, but since joint survey at the instance of the respondent was conducted, I find no material to charge the respondent for contempt of Court. This is a fit case where the petitioner may approach the appropriate Civil Court for redressal of his grievance.

13. Accordingly, I find no merit in the petition of contempt and hence, it is closed."

6. It was further observed in the said order dated 06.02.2014- "The dispute what is brought on record by the petitioner cannot be adjudicated upon by a writ Court. The issue is supposed to be decided by a Civil Court taking evidence in a regular trial since factual situation of the land alleged to have acquired and the land alleged to have utilized for construction of the road is to be determined after considering evidence of the parties."

7. The subject matter of the writ petition, in short, was that in the year 1995 Indo-Bangladesh Border Road (for short "IBB Road") along the border of Bangladesh was taken up by the Border Road Organization (for short "BRO") through the land belonging to the petitioner without any acquisition process. After the construction of IBB Road was almost over, in the year 1997 State Government initiated an acquisition process and acquitted 26.39 acres of land with a width of 66 ft. from the land of the petitioner, but the alignment of land acquired was different than that of the land where the IBB Road was actually constructed. Compensation was paid for the acquired 26.39 acres of land and the petitioner got the compensation. The acquired land was lying abandoned since the IBB Road was actually constructed through a different alignment occupying

25.41 acres of land belonging to the petitioner. In the year 2004 for the purpose of Indo-Bangladesh barbed wire border fencing (for short "IBB fencing"), another alignment of land measuring 35 ft. in width was acquired from the land of the petitioner running along the already constructed road for which also compensation was paid. The case of the petitioner is that BRO constructed the road before acquisition, through the land of the petitioner, in one alignment whereas, the acquisition of 26.39 acres of land was acquired through a different alignment and the acquisition process was complete and since the petitioner did not get the compensation for the land through which the IBB road was actually constructed, the writ petition was filed seeking direction to the respondents for payment of compensation for the said land through which the road was actually constructed.

8. As per consenting order dated 17.01.2011 passed in W.P.(C) No. 228 of 2010 the respondent, District Magistrate and Collector, North Tripura initiated a joint survey and a report was submitted on 07.04.2011, but the petitioner was not satisfied with the joint survey report and, therefore, by order dated 06.04.2013 passed in the contempt case, a further joint survey was directed by this Court giving notice to all concerned parties including the petitioner and accordingly, joint survey was again conducted wherein the representative of the petitioner was also present and the report submitted by the joint survey was placed before the Court, which has been considered by this Court in the impugned order dated 06.02.2014 and for ready reference paras 7 and 8 of the order are reproduced, which read as follows:-

"7. Pursuant to the above order, again a joint survey was conducted in the presence of all the parties including the petitioner by the Deputy Collector and Magistrate, Office of the Sub-Divisional Magistrate, Kailashahar dated 30.07.2013 and that joint survey report placed on record by the respondent (alleged contemnor) along with a copy of the map prepared at the time of joint survey. The report is in details containing several sheets of papers showing the plots of land through which the IBB road was actually constructed. The sum and substance of the report submitted by joint survey team is that land measuring 26.39 acres (66 ft. width) was acquired in the year 1997 with a definite alignment, but the road was not actually constructed through that acquired land except in some places of overlapping of that alignment. The road was actually constructed in the year 1995 through a different alignment. In 2004 another 35 ft. width land along the actually constructed road was acquired for the construction of IBB fencing and the road which was actually constructed, is within that acquired land of IBB fencing and actually acquired land is lying abandoned except in some places where the alignment was overlapping. The representative of the petitioner signed the joint survey report with objection since they were not satisfied with the report.

8. Since a joint survey was conducted, pursuant to the order passed by this Court, I find no willful, deliberate or intentional violation of the Court's order by

the respondent.

It is an undisputed fact, rather, it is made clear in the survey reports that IBB road was constructed in the year 1995 before acquisition process was taken up. In the year 1997, acquisition process was taken up for the IBB road, but that acquisition of land was of a different alignment and total 26.39 acres of land (66 ft. width) was acquired and compensation paid. Admittedly, the acquired land is not the land through which IBB road was actually constructed. In the year 2004, another 35 ft. width land was acquired for IBB fencing and that was along the side of IBB road, which was already constructed. The survey team found that the IBB road which was actually constructed was lying within the acquired land of that 35 ft., acquired for the purpose of IBB fencing and the actually acquired land for IBB road was lying abandoned except in some places as shown in the map and therefore, there was no need of initiating any further acquisition process. The petitioner is not satisfied with the report and filed rejoinder contradicting the report submitted by survey team and the objection what is submitted by the petitioner cannot be prima facie thrown overboard. Any inconsistency or dispute over the survey report cannot be a ground to arrive at a conclusion that the respondent (alleged contemnor) violated the order of the Court intentionally, deliberately and willfully and thereby, committed contempt."

9. The present review application is the replica of the writ petition and the petitioner substantially sought the same relief what was sought in the original writ petition. Learned counsel, Mr. Bose, for the petitioner has submitted that inconsistencies are apparent in the reports of joint survey which are on record and one thing is clear from the reports of the joint survey that IBB road was not constructed through the land acquired for IBB fencing. Even the map of the joint survey clearly indicates that the IBB road is in a different alignment than that of the land acquired for IBB fencing. Under such circumstances, directions may be given to the respondents to initiate acquisition process for the land through which IBB road was actually constructed, even in the absence of an order for punishment of contempt of Court is passed by this Court in the given facts and circumstances of the case. In support of his contention, learned counsel has referred the decision of the Apex Court in the case of Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, .

10. It is also contended by Mr. Bose, learned counsel, that this Court is well empowered to review the order since there is sufficient reason for such review as there is mistake on the part of the Court in considering the facts brought on record. In support of his contention he has referred the case of Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, .

11. Per contra, learned senior counsel, Mr. K.N. Bhattacharjee for the respondent has submitted that the petition for review itself is not maintainable since it is in connection with a contempt matter. There is no error apparent or mistake in the impugned order passed by this Court and in the review application the petitioner practically stated the entire fact of the writ petition and sought the relief what

the petitioner sought in the writ petition whereas the writ petition was disposed of with a consent order of a joint survey. Since joint survey has been conducted there remains nothing for contempt or for passing any other order by this Court. The petitioner in the guise of review practically sought a re-hearing of the writ petition which is not permissible and hence, the review petition is liable to be rejected in limine.

12. Section 114 along with Order XLVII of the Code of Civil Procedure deals with the power of review. Order XLVII Rule 1(1) reads as follows:-

"1(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."

13. To attract the jurisdiction of review the petitioner has to show 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 order was made, or that on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, review of the order passed in the contempt case is necessary.

14. In the instant case at hand, the petitioner reiterated the same fact and sought for the same relief what had been the contention and relief sought in the original writ petition. This is absolutely not permissible in a review case. The petitioner has to show that some materials placed on record have been overlooked or that there are some other mistakes or errors apparent on the face of the record or that there are some other valid and sufficient reasons for review.

15. The contempt case was filed alleging that order dated 17.01.2011 passed in W.P.(C) No. 228 of 2010 has not been complied with. A joint survey was conducted at the instance of the respondent, but the petitioner was unhappy with that joint survey and so, in the contempt proceeding another order dated 06.04.2013 was passed to have a fresh joint survey and accordingly, the joint survey was made in the presence of the petitioner, but the petitioner was not still satisfied with the joint survey. Since joint survey was conducted as per order of this Court dated 17.01.2011, there was nothing of the contempt and hence, the

contempt case was closed. The petitioner has to show that there was mistake or error apparent on the face of the record in respect of the order closing the contempt case, but in the review application the petitioner could not show any such error or mistake or new material, but prayed for an order as already reproduced hereinbefore, seeking relief what was sought in the original writ petition, which has already been disposed of.

16. If the petitioner's contention is accepted, it would amount to rehearing of not only the contempt matter but also the original writ petition and further it would amount to sitting in appeal over the order passed by this Court, which is not permissible in law.

17. The Supreme Court in the case of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, has held - "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, CPC. The review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of Court under order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226".

18. In the case of Parsion Devi and Others Vs. Sumitri Devi and Others, , the Supreme Court in paras 9 and 10 of the Judgment has observed thus:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a 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 CPC. 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, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

10. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly, the order in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article 182 and not article 181 cannot be said to fall within the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma,

J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of Gupta J. on the grounds detailed in the review petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and we accordingly accept this appeal and set aside the impugned order dated 6.3.1997."

19. In the present case learned counsel of the petitioner has submitted that the order passed in the contempt case was erroneous since the reports of the joint survey conducted time to time and other documents were not considered by this Court while deciding the contempt case. I am of considered opinion that the contempt case was filed alleging that order of the High Court dated 17.01.2011 passed in W.P.(C) No. 228 of 2010 was not complied with in true spirit and once it is found that joint survey was conducted and the report was filed before the Court, so there remains nothing to hold that there was disobedience or violation of the Court's order and, therefore, there was any contempt. This Court examined the joint survey reports and has observed that the issue is so complicated for which regular trial in the civil Court is necessary and that observation has been made in the impugned order dated 06.02.2014. Therefore, on the ground that the said decision was erroneous and, therefore, there shall be a review, cannot be entertained.

20. In the case of The State of West Bengal and Others Vs. Kamal Sengupta and Another, , the Apex Court while deciding power of review by an Administrative Tribunal, in para 35 of the judgment, referring to several other previous judgments of the Court, has held:-

"35. The principles which can be culled out from the abovenoted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier."

21. Learned senior counsel, Mr. Bhattacharjee for the respondent has argued that review is not permissible of an order passed in a contempt case. I cannot agree with the submission of learned senior counsel, Mr. Bhattacharjee since in my view the provision of review is generally applicable in all proceedings irrespective of it is a contempt proceeding or not. In the case of any mistake or error apparent on the face of the record or for any other sufficient reason, a judgment or order passed in a contempt case also may be reviewed for fair ends of justice. However, I agree with the submission that review is not permissible in the guise of an appeal and that the Court cannot sit as a Court of appeal over its own judgment and pass a fresh order contrary to the order already passed earlier.

22. In the case of Delhi Development Authority(supra), referred by learned counsel, Mr. Bose, the Apex Court has observed that in a case of contempt in addition to punishing the contemnors, the Court can pass appropriate direction to remedy the breach of any undertaking. There is no quarrel on the issue that if there was any breach of the order, to remedy the breach the Court can pass appropriate order. This decision has no application in the present case since there was no breach of any order found in the present case. Here the writ Court passed the order for a joint survey and joint survey was conducted at the instance of the respondent. The petitioner was not satisfied with the observation of the joint survey, but such dissatisfaction of the petitioner can neither amount to violation of the order nor it ask for issuing any further or new direction.

23. In the case of Board of Control for Cricket in India and anr.(supra), referred by learned counsel, Mr. Bose, the Supreme Court in paras 88, 89 and 90 has observed thus-

"88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a Court to review its order if the conditions precedent

laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in S. 114 of the Code in terms whereof it is empowered to make such orders as it thinks fit.

89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47, Rule 1 of the Code are wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*."

24. The ratio of this judgment is also not applicable in the present case since there is nothing to show that there was any mistake or error on the face of the record or that there was any other sufficient reason to review order dated 06.02.2014. The petitioner, in my considered opinion, having no valid reason at all preferred the present review application though it was clearly observed in the impugned order dated 06.02.2014 that the issue which is involved in the matter should be decided by a civil Court after taking evidence of both side, but still the petitioner insisting the matter in the High Court for no cogent reason at all and the review petition, therefore, is found to be devoid of any merit.

25. Accordingly, the review application stands dismissed.

26. Costs to be borne by the parties.