

(2012) 11 KL CK 0185
In the High Court Of Kerala
Case No : R.P. No. 1057 of 2007

Manager, T.K. Madhava Memorial U.P. School	APPELLANT
Vs	
State of Kerala and Another	RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 33, Order 47 Rule 1
Constitution of India, 1950 — Article 142, 226
Kerala Land Acquisition Act, 1961 — Section 3(1)

Citation : (2013) 1 KLJ 735

Hon'ble Judges : Pius C. Kuriakose, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : C.G. Bindu and C.G. Ajitha, for the Appellant; C.R. Shyam Kumar, (GP), for the Respondent

Final Decision : Dismissed

Judgement

N.K. Balakrishnan, J.—This Review Petition is filed by the Manager of T.K. Madhavan Memorial U.P. School who was the respondent in the Appeal L.A.A. No. 381 of 1989. That appeal was filed by the respondents herein (Government) challenging the award passed by the Reference Court under which the land value was re-fixed at Rs. 2750/- per Are, granting an enhancement of Rs. 1012/- per Are. The appeal filed by the respondents herein was dismissed by this Court as per Judgment dated 19-12-1996. This Review Petition was filed with a petition to condone the delay of 3630 days. That petition to condone the delay was allowed by this Court on condition. The condition was complied with. Hence, this Review Petition has been heard. The Review Petitioner contends that this Court had, in cases pertaining to acquisition of identical land pursuant to a notification of 1978 had re-fixed the land value at Rs. 5,000/- per Are. The judgment of this Court in L.A.A. No. 97 of 1989 is relied upon by the review petitioner in support of that plea. The petitioner contends that information regarding the judgment in L.A.A. No. 97 of 1989 was not available to the petitioner when the judgment in L.A.A.

381 of 1989 was passed. The petitioner contends that since the respondents herein were in the know of things and since the compensation for identical land has to be fixed adopting the same land value, it was the bounden duty of the respondent to inform this Court as to the land value fixed by this Court in other cases, while deciding L.A.A. No. 381 of 1989. Had it been done this Court would have re-fixed the land value at the rate of Rs. 5000/- per Are but as the respondents suppressed that fact the said judgment is to be reviewed, the petitioner contends. It is contended that the petitioner was not advised of the necessity of preferring any appeal complaining of inadequacy of the land value fixed by the Reference Court or to file cross-objection in the appeal preferred by the respondent/Government.

2. The learned Senior Government Pleader Mr. C. Shyamkumar has taken strong exception to the contention raised by the petitioner pointing out that it is a case where the appeal filed by the Government was dismissed by this Court and so even if it is assumed that there was another judgment rendered by this Court in respect of an identical land fixing the land value at Rs. 5,000/- per Are that could not have been made use of by the petitioner herein to get the land value re-fixed in the appeal filed by the Government, which was filed contending that the land value fixed by the Reference Court is unreasonable or excessive. If as a matter of fact, the petitioner was aggrieved by the land value fixed by the Reference Court as inadequate then a regular appeal should have been filed, or at any rate, a cross-objection should have been filed paying the required court fee. The contention that in view of Order 41 Rule 22 and Rule 33, the petitioner could have advanced his contention in the appeal filed by the Government even without filing an appeal or cross appeal, does not stand to rhyme or reason. What is provided in R. 22 of Order 41 is that the respondent who has not appealed against can, not only support the decree, but also contend that the finding against him in the court below in respect of any issue which ought to have been in his favour, is incorrect and may also take any cross-objection to the decree. It only means that the respondent in the appeal, without filing a cross-objection can challenge an adverse finding against him. That does not mean that the respondent in the appeal can put forward a claim in excess of what was granted by the trial Court. There is vast difference between a claim which ought to have been preferred by filing Cross-objection or appeal and a finding on an issue, for, if the respondent in the appeal is aggrieved by the negation of any part of the claim, he ought to have filed appeal or cross-objection paying the required court fee and should have put forward a specific claim for the amount disallowed by the trial court.

3. Smt. C.G. Bindu, has relied on the decision of the Supreme Court in Major Dhian Singh Vs. Union of India, in support of her submission that while determining the land value, the land value determined in respect of identical lands has to be relied upon and that only because the claimant limited his claim to a particular amount it should not deter the court from fixing the land value adopting the value arrived at in respect of identical lands. In that case, in fact

the claimant had filed appeal challenging the inadequacy of the compensation awarded. It was noticed by the court that for the lands similarly situated value was fixed at Rs. 12,000/- per bigha. But the appellant was awarded Rs. 10,000/- for bigha only because he had limited his claim to that amount. But in the appeal he claimed value to be determined at Rs. 20,000/- per bigha. It was contended that the court below was justified in fixing the land value at Rs. 10,000/- per bigha. It was in that context while considering the appeal filed by the appellant challenging the inadequacy of the compensation it was held that the correct market value of the land falling in Block B at the relevant time was Rs. 12,000/- per bigha. The aforesaid decision cannot come to the rescue of the petitioner herein since he did not file any appeal challenging the inadequacy of the compensation awarded by the Reference Court nor did he file any Cross Appeal when the State appealed against the judgment passed by the Reference Court. The decision of this Court in *Hindustan Organic Chemicals Ltd. Vs. Vasudevan Damodaran Namboodiri and Others*, ; *Smt. Saraswati Devi and others Vs. U.P. Government and another*, ; *State of Kerala Vs. Kottammal Mammeeriyakutty and Others*, : *State of Kerala Vs. Kottammal Mammeeriyakutty and Others*, ; *Daisy and Another Vs. The State of Kerala*, ; *State of Kerala Vs. Kottammal Mammeeriyakutty and Others*, : *State of Kerala Vs. Kottammal Mammeeriyakutty and Others*, etc. have been relied upon by the learned counsel for the petitioner to fortify her submission as to what are the guidelines to be followed in determining the market value. It is also submitted that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars which is a bonafide transaction has to be considered.

4. There is no dispute regarding the proposition that when the land is being compulsorily taken away from a person, the Government which expropriates the land of the claimant is bound to give the highest value which similar land in the locality is shown to have fetched in a bonafide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. The decision of the Supreme Court in *Pal Singh and others Vs. Union Territory of Chandigarh*, has also been cited by Smt. Bindu in support of her submission that judgment of a court in a land acquisition case determining the market value of land in the vicinity of the acquired lands, even though not inter parties could be admitted in evidence either as an instance or, one from which the market value of the acquired land could be deduced or inferred as has been proved by the person relying upon such judgment by adducing evidence. The learned counsel submits that when the land covered by the very same notification, acquired for the very same purpose is given higher land value in another case which was pending before the Reference Court certainly the claimant can rely upon those judgments to have the land value in his case also re-fixed based on the judgments rendered in the other cases. But it is not in dispute that when the case was pending before the Reference Court no such judgment was produced. When the appeal was filed by the State contending that the land value fixed by the Reference Court was excessive, judgments in other cases were brought. I to

the notice of that court and it was based on the land value fixed in those cases the appeal I filed by the respondent was dismissed.

5. It is submitted by Smt. C.G. Bindu, the learned counsel for the petitioner that in L.A.R. No. 89 of 1983 which was covered by a notification of 1978, the claimants therein contended that, at any rate, they were entitled to get land value fixed at the rate of Rs. 1,500/- per cent. In that case the Reference Court re-fixed the land value at the rate of Rs. 2470/- per Are. The learned counsel has produced copy of the judgment of this Court in A.F.A. No. 109 of 1994. But that appeal arose from the judgment in L.A.R. No. 90 of 1983. In A.F.A. No. 109 of 1994 this Court fixed the land value at the rate of Rs. 5,000/- per Are. The learned counsel further submits that while arriving at that conclusion, this Court had noticed the Judgment in L.A.A. No. 410 of 1988 and L.A. A. 97 of 1989 also, covered by the very same notification of 1978. Therefore, the argument is that had these judgments been brought to the notice of this Court, the land value would have been re-fixed so far as the case on hand also at Rs. 5,000/- per Are. But the land value in those cases were re-fixed at Rs. 5,000/- per Are in the appeals filed by the claimants who claimed land value at a higher rate and not in a case where the respondent filed appeal contending that the land value fixed by the Reference Court was excessive.

6. On going through the file of the Land Acquisition Officer it is seen that Sri. Velayudhan who was the then President of S.N.D.P. Sakha and the Manager of T.K.. Madhavan Memorial School had filed a statement on 28-11-1979 whereunder he contended that considering the importance of the locality the market value has to be determined at the rate of Rs. 1,500/- per cent. When the case was referred and the matter was pending before the Sub Court, Alappuzha as L.A.R. No. 33 of 1986 Mr. K.K. Vasu the then Manager of T.K. M. U.P. School mentioned above again filed a statement on 28-10-1986 where also it was stated that considering the importance of the locality, the market value of the property has to be determined at the rate of Rs. 1,500/- per cent.

7. The learned Sr. Government Pleader submits that if the statement filed by the claimant before the Reference Court is treated as a plaint then the claimant who is in the position of a plaintiff cannot now contend that the land value should have been determined by the Reference Court at the rate of Rs. 5,000/- per Are. The further fact that the claimant did not file any appeal or Cross-objection before this Court when the appeal filed by the Government was pending (claiming determination of the land value at the rate of Rs. 5,000/- per Are) also assumes much relevance to reject the claim now made by the claimant in this Review Petition. This is another ground projected by the learned Sr. Government Pleader in support of his submission that in the absence of a plea claiming determination of land value at the rate of Rs. 5,000/- per Are, the contention that there is an error apparent on the face of the record is rather unsound and untenable.

8. The argument advanced by the learned counsel for the petitioner is that under

Rule 33 of Order 41 the appellate court has power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as may require, and this power can be exercised by the court notwithstanding that the appeal is as to part only of the decree and that the same can be exercised in favour of or any of the respondents or parties, although such respondents or parties may not have filed any appeal or Cross-objection.

9. The learned Sr. Government Pleader would submit that since the appeal was filed by the Government stating that the amount awarded by the Reference Court was excessive and since no Cross-objection or appeal was filed by the claimant (the petitioner herein) the contention that could have been raised by the petitioner in the appeal filed by the respondent was only to support the judgment and to have a dismissal of the appeal. Since the appeal was only to be dismissed by this Court in view of the judgments rendered in other identical matters, there was no duty cast on the Government/appellant to produce documents or evidence to support the claim of the respondent in the appeal. The contention advanced by the petitioner that since the Government did not produce the copies of the judgments in respect of cases pertaining to the acquisition of identical land, there was suppression of fact, is found to be devoid of any merit.

10. The notification in this case was issued u/s 3 (1) of the Kerala Land Acquisition Act on 14-7-1978. The award was passed in the year 1980. It was stated that possession was taken in the year 1984. An extent of 13.20 Ares of land was acquired for the purpose of Alleppey-Town-Bye pass road. The Land Acquisition Officer fixed the land value at Rs. 1538/- per Are. That was enhanced by the Reference Court to Rs. 2750/- per Are. It is argued by the learned Government Pleader that before the Reference Court the petitioner herein contended that the land value shall be fixed at the rate of Rs. 1500/- per cent. The Reference Court re-fixed the land value at Rs. 2750/- per Are = Rs. 1101/- per cent. But the contention now advanced by the petitioner that the land value should have been re-fixed at Rs. 5000/- per Are is totally unfounded.

11. This Court while considering this Appeal (L.A.A. No. 381/1989) filed by the respondent/Government took note of the fact that the Reference Court re-fixed the land value at Rs. 2750/- per Are relying on the judgments in L.A.R. Nos. 187 of 1982 and 191 of 1982 and other judgments passed by the Reference Court. It was noticed that the judgments in those cases relied on by the Reference Court subsequently attained finality and so the Government could not seriously canvass for the position that the land value re-fixed by the Reference Court was excessive. It was mainly on that ground the Appeals including L.A.A. No. 381 of 1989 were dismissed by this Court.

12. The learned Sr. Government Pleader Sri. Shyam Kumar has relied upon the decision of the Apex Court in Banarsi and Others Vs. Ram Phal, . That was a case where suit was filed against the defendants for specific performance. The relief of specific performance was refused but a decree was passed by the trial Court for

refund of money advanced. The Hon'ble Supreme Court held that the decree for specific performance is a larger relief. Refund of money advanced is a smaller relief. In such cases, the defendant would be aggrieved only to the extent of refund of money advanced. It was thus held as a necessary corollary from the above said statement of law that in an appeal filed by the defendant laying challenge to the relief of compensation or refund of money or any other relief, while decree for specific performance was denied to the plaintiff, the plaintiff as a respondent cannot seek the relief of specific performance of contract or modification of the impugned decree except by filing an appeal of his own or by taking cross objection. It was held that in the absence of cross-appeal preferred or cross objection taken by the plaintiff respondent, the appellate court while dismissing the defendant's appeal did not have jurisdiction to modify the decree by decreeing the plaintiffs suit for specific performance. The learned Sr. Government Pleader submits that the position in this case is also almost identical since the claimant did not prefer any appeal or Cross-objection in respect of the claim that was disallowed by the Reference Court. The appeal was filed by the Government challenging the award passed by the Reference Court contending that it was excessive. When that is the position, applying the ratio enunciated by the Apex Court in Banarsi's case (cited supra) the petitioner herein is not entitled to contend that in the appeal filed by the Government, relief to the respondent therein (the petitioner herein), should have been granted. The maximum that could have been done in the appeal filed by the Government was a dismissal of the appeal and not to pass a decree in favour of the petitioner herein, for, the petitioner herein did not file any appeal or cross-objection.

13. The decision of the Supreme Court in Koksingh Vs. Smt. Deokabai, has been relied upon by Smt. C.G. Bindu, the learned counsel for the petitioner in support of her submission that even if the respondent in appeal did not file any appeal from the decree of the trial court, that was not a bar to the High Court passing a decree in favour of the respondent. In the case cited supra, the respondent therein did not appeal against the decree of the trial court negating her claim in the suit for a charge on the property. Hence, it was contended that the High Court was wrong in granting a decree for enforcement of the charge as the decree of the trial court became final so far as the respondent was concerned as she did not file any appeal therefrom. The Apex Court found that plea unsustainable and held that under Order 41 Rule 33 of C.P.C. the High Court was competent to pass a decree for the enforcement of the charge in favour of the respondent notwithstanding the fact that the respondent did not file any appeal from the decree. Relying on the decision in Giasi Ram and Others Vs. Ramjilal and Others, , it was held in the decision cited supra (Koksingh's case) that even if the respondent did not file any appeal from the decree of the trial Court, that was no bar to the High Court passing a decree in favour of the respondent for the enforcement of the charge. It was held:

In Giasi Ram and Others Vs. Ramjilal and Others, the Court said that in O. 41 R. 33 the expression "which ought to have been passed" means "what ought in law

to have been passed" and if an appellate Court is of the view that any decree which ought in law to have been passed was in fact not passed by the Court below, it may pass or make such further or other decree or order as the justice of the case may require.

The aforesaid decision has to be distinguished, for, in that case the plaintiff was entitled to have a decree for enforcement of the charge since that was the decree in law to have been passed but since that was not granted and since the High Court found that since the plaintiff was entitled to have in law such a decree, even though the plaintiff did not file appeal, the decree was granted in favour of the respondent in the appeal for enforcement of the decree. But here the position is different, the learned Sr. Government Pleader submits. It is not a case where the petitioner herein was in law entitled to have the land value fixed at a particular rate. The petitioner's claim even before the Reference Court was to fix the land value at the rate of Rs. 1,500/- per cent and not to fix the land value at Rs. 5000/- per Are. What should have been the land value fixed by the Reference Court would depend upon the pleadings and evidence adduced by the parties. In other words, it depends upon the facts of the case and it is not a decree which ought in law to have been passed in the reference case filed before the Reference Court. As such, in the appeal filed before the High Court by the respondent the High Court was not bound to pass a decree or award in favour of the petitioner herein fixing the land value at a higher rate since there was no statutory prescription to pass such an award. In other words, it was not something which ought in law to have been passed. Therefore, the aforesaid decision also does not come to the rescue of the petitioner.

14. Smt. Bindu has relied upon the decision of the Apex Court in *The State of Punjab and Others Vs. Bakshish Singh*, - where it was held:

Order 41, Rule 33 C.P.C. gives very wide power to the appellate court to do complete justice between the parties and enables it to pass such decree or order as ought to have been passed or as the nature of the case may require notwithstanding that the party in whose favour the power is sought to be exercised has not filed any appeal or cross-objections. The discretion, however has to be exercised with care and caution and that too in rare cases where there have been inconsistent findings and an order or decree has been passed which is wholly uncalled for in the circumstances of the case. The appellate court cannot in a garb of exercising power under this Rule, enlarge the scope of the appeal. Whether this power should or should not be exercised depends upon nature and facts of each case.

That was a case where the Appellate Court did not notice that an inconsistent judgment was passed by the trial Court i.e. one part of the decree was inconsistent with the remaining part of the decree and so it was held that the appellate court should not have allowed an inconsistent judgment to pass through its scrutiny and, therefore, the Supreme Court under Article 142, in exercise of its power of doing complete justice between the parties, finally

decided the case by passing the orders allowing the appeal. The judgment of the lower appellate court in so far as it purported to remand the case to the punishing authority as also the judgment of the High Court were set aside and the judgment and decree of the trial court was upheld. As said earlier, that was done for doing complete justice between the parties since an inconsistent judgment was passed by the lower appellate court. That was to be corrected by the High Court. Since that was not done, the Supreme Court, invoking the power under Article 142 of the Constitution, corrected the same as stated above. That decision also has no application to the facts of this case. As submitted by the learned Sr. Government Pleader, that was a rare case where the Hon'ble Apex Court had to step in as the judgment rendered by the first appellate court was inconsistent.

15. The learned counsel for the petitioner has relied upon the decision in Sagunthala (Dead) through LRs. Vs. Special Tehsildar (L.A.) and Others, to strengthen her submission that grant of higher compensation than what is claimed by the claimants is also well justified. But in the aforesaid case the Reference Court fixed the amount of compensation to be at Rs. 1,75,000/-. The Apex Court upheld that finding. In that case, as far as the question of grant of higher compensation than what is claimed by the claimants is concerned the Reference Court had observed that even in her representation before the Land Acquisition Officer, the claimants had stated that in the event of their being not satisfied with the award, they reserve the right to go before the Civil Court for determination of just and reasonable compensation. According to the learned counsel, even if the claim now made by the petitioner is higher than what was claimed by the petitioner in the Reference Statement/claim made before the Land Acquisition Officer and before the Reference Court, still this Court can re-fix the land value at the rate of Rs. 5,000/- per Are as was done in respect of some other lands covered by the notification of 1978. But in the case cited supra, the claimants had contended that they are entitled to higher compensation than what was claimed in the petition, based on the materials which were available to Court.

16. Smt. Bindu C.G. the learned counsel appearing for the petitioner has also cited the decision in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, in support of her submission that only because the petitioner did not file cross-objection paying the requisite court fee, she cannot be denied the fair and just compensation since, for the lands acquired from other persons covered by the same notification, compensation was paid fixing the market value at the rate of Rs. 5,000/- per Are. In the decision cited supra it was held that since the land is acquired under the Land Acquisition Act, it would not be fair and just to deprive the holder of its land the true market value when the law, in so many terms, declares that he shall be paid such market value. In that case, the learned Single Judge and the Division Bench took the view that the claimants were entitled to enhanced compensation and that the case of the appellants thereon stood on the same

footing as others who were granted compensation as they had paid the requisite court fee. It was held by the Apex Court that the appellants therein should have been given an opportunity for paying the deficit court fee so that they also could get enhanced compensation at the same rate as others. It was held that to deny that benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value.

17. The learned Sr. Govt. Pleader submits that the position here is entirely different since the petitioner did not file appeal claiming enhanced compensation, and so, the question of payment of requisite court fee does not arise at all. It is argued that had the petitioner filed appeal claiming enhanced compensation and if that claim was disallowed solely on the ground of non-payment of requisite court fee, then certainly the petitioner could have paid up the deficit court fee, in which case, the court could have awarded enhanced compensation at the same rate as other claimants were granted compensation. It is also submitted by the learned Govt. Pleader that the Review Petition itself was filed about 10 years after the disposal of the appeal by this Court and only because, the petitioner later came to know that in some other cases the claimants therein were awarded compensation at the rate of Rs. 5,000/- per Are, petitions have been filed to review the judgment of this Court as per which the appeal filed by the Government was dismissed. There was nothing to be reviewed so far as that judgment is concerned, and if that be so, all other contentions raised by the petitioner do not survive for consideration at all. It is also argued by the learned Government Pleader that the burden of establishing the claim for higher market value of the lands is always on the claimants. The burden of proving that the amount of compensation awarded by the Collector is inadequate, lies upon the claimant. The claim statement filed by the claimant is to be treated as a plaint and he is in the position of a plaintiff and therefore, the Court has to treat the reference as original proceedings before it.

18. It was held by the Apex Court in *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, , thus:

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

It was also held in *Shivdeo Singh and Others Vs. State of Punjab and Others*, that there is nothing in Article 226 of the Constitution to preclude the 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. But, there are definitive limits to the exercise of the

power of review. It was held that the power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made.

19. In *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, , the Hon"ble Supreme Court drew a distinction between erroneous decision and a decision which is characterized as vitiated by error apparent. It was held:

There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

20. Relying on these decisions it was held by the Apex Court in *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, , as follows:-

It is well settled 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, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleswar Sharma v. Aribam Pishak Sharma*, speaking through Chinnappa Reddy, J., has made the following pertinent observations:

It is true was observed by this Court in *Shivdeo Singh v. State of Punjab*, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising th 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. But, there are definite limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

Considering the facts of that case, it was also held in *Meera Bhanja*:

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.

That was a case where the Division Bench of the High Court on re-appreciation of oral and documentary evidence held that the Division Bench had earlier committed an error apparent on the face of the record in passing a preliminary decree for partition in respect of plot No. 74 mentioned in that case and thus the review was allowed. It was also found that a later Division Bench found fault with the reasoning adopted by the earlier Division Bench. It was held by the Apex Court that the approach of the later Division Bench dealing with the review proceedings purely 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. The Apex court held that it would not become a patent error or error apparent in view of the settled legal position. In substance, the later Division Bench re-appreciated the entire evidence, sat almost as a court of appeal and reversed the findings reached by the earlier Division Bench. It was held that even if the earlier Division Bench's findings were erroneous it would be no ground for reviewing the same as that would be the function of an appellate Court. It was held that the decision of the earlier Division Bench became final so far as the High Court was concerned and so 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. Hence, the Hon"ble Supreme Court set aside the later judgment of the Division Bench reviewing the earlier Judgment. This decision has been pressed into service by the learned Sr. Govt. Pleader in support of his argument that under the guise of a Review Petition a judgment rendered by this Court which became final cannot be reviewed since in the earlier appeal filed by the Government the maximum that could have been sought for by the respondent therein was to have a dismissal of the appeal. That was already done. In the appeal filed by the Government the petitioner herein was not entitled to claim enhancement of the compensation since the petitioner herein did not file any cross-appeal claiming enhancement of the compensation.

21. In *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others*, it was held by the Apex Court that the power of High Court in review is not the same as appellate powers and that review on a ground that certain documents forming part of the record were not considered was held unjustified. The decision of the Supreme Court in *Gokal Vs. State of Haryana*, has been relied upon by the learned counsel for the petitioner in support of her submission that this Court can allow the amendment of the claim petition if in fact it is required. In the decision cited above, the Apex Court after considering all the arguments and having regard to the fact that there must have been a rise in market price between

1974 and 1978 thought it fair and reasonable to fix the figures of compensation as noted in Table I of that judgment. It was submitted before the Apex Court that in some of those cases Court fee was not paid to cover the entire amount of compensation as ordered by the Apex Court. In that context though formal petition for amendment of valuation was not filed, having regard to long lapse of time, the Apex Court permitted oral request that the claim be amended appropriately and the appellants were held entitled to get enhanced compensation as calculated on the basis of the compensation fixed by the Apex Court. That decision also is not of much help to the petitioner as it was rendered in the appeals filed by the claimants.

22. It is also pointed out by the learned Sr. Government Pleader that the petitioner filed Execution Petition before the Reference court and the enhanced compensation awarded by the Reference Court was deposited by the respondent and it was received by the claimants, consequent where to full satisfaction was recorded in that Execution Petition. That Execution Petition was filed as E.P. 1211 of 1989 and was closed on 9-1-1992 after recording full satisfaction. Therefore, according to the respondent, at that point of time or even thereafter, the petitioner had no grievance that the amount of compensation awarded was inadequate. Even when the Government filed appeal contending that the compensation awarded by the Reference Court was excessive, the petitioner did not choose to file any appeal or cross-objection. In the execution petition the amount awarded was deposited and the execution petition was closed after recording full satisfaction. It was done after the appeal was dismissed. Hence it is too late in the day for the petitioner to lament over the matter and contend that the compensation should have been fixed at a higher rate adopting the land value at Rs. 5000/- per Are when the claim made by the petitioner before the Reference Court was only at Rs. 1,500/- percent.

23. It is argued by the learned Government Pleader that power to review a judgment or order is circumscribed by order XLVII Rule 1 C.P.C. A person considering himself aggrieved by the order must satisfy the court that 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 it must be a case where there was a mistake or an error apparent on the face of the record. Therefore, the contention that since the respondent/Government did not produce or bring to the notice of the court the order passed in other L.A.R. cases is not a reason for review of the judgment. It is not a case where the petitioner can contend that after the exercise of due diligence the order passed in other cases was not within his knowledge. It is further argued that an error which is not self evident and is only 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 XLVII Rule 1 C.P.C.

24. There is vast difference between an erroneous decision and an error

apparent on the face of the record. Sri. Shyam Kumar has relied upon the decision of the Supreme Court in Parsion Devi and Others Vs. Sumitri Devi and Others, in support of his submission that a Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise". It was held by the Apex Court thus:

Under Order 47 Rule 1 C.P.C. 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 riot 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 C.P.C. In exercise of the jurisdiction under Order 47 Rule 1 C.P.C. it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

It was further held in the decision stated (supra):

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 latter only can be corrected by exercise of the review jurisdiction.

Relying on the aforesaid decision the learned Sr. Government Pleader submits that in the case on hand "there is no error apparent on the face of the record". The appeal filed by the State was dismissed in view of the fact that certain other judgments passed by the court re-fixing the land value which attained finality was brought to the notice of the court. The maximum that could have been done in the appeal was only to dismiss the appeal. Since no separate claim was put forward by the petitioner herein claiming enhancement of the compensation, no order could have been passed by this Court enhancing the compensation, in the appeal filed by the respondent/State. Whether in some other cases land value was fixed at the rate of Rs. 5,000/- per Are and whether the acquired lands mentioned in those cases were similar in nature or similarly situated was not the issue before this Court while disposing of the Land Acquisition Appeal filed by the Government. The contention that, had other orders or judgments been produced before this Court, a different decision would have been rendered by this Court cannot be "an error apparent on the face of the record" for, in order to arrive at such a finding the court has to detect the same by a process of reasoning based on the pleading and evidence adduced before court.

25. If the court finds that the error pointed out in the revision petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the court from rectifying the error. In S. Nagaraj and Others Vs. State of Karnataka and Another, it was held:

Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of

finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice.

26. It was also held by the apex Court in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, thus:

It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

It was held in Lily Thomas, Vs. Union of India and Others, thus:

In a civil proceeding, an application for review is entertained only on a ground mentioned in O. 47, Rule 1 of the CPC and in a criminal proceeding on the ground of an error apparent on the face of the record. But whatever the nature of the proceedings, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility".

In the light of the findings entered above, we hold that this Review Petition is devoid of any merit and is unsustainable. Hence, this R.P. is dismissed.