
(2014) 02 AHC CK 0232
In the Allahabad High Court
Case No : Review Petition No. 63 of 2014

M/s. Vidya Erectors and Engineers Pvt. Ltd.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 28, 41
Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 28, 41
Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 28, 41

Citation : (2014) 122 RD 690

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Sachin Garg, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—This application has been filed for review of the judgment and order dated 3.1.2014. When the matter came up as a fresh on 5.2.2014, it was directed to be put up the next day i.e. on 6.2.2014 along with the original record of Writ Petition No. 7556 of 2013 wherein the judgment sought to be reviewed was passed. It was further directed that the copy of the review petition be served upon the Counsel appearing for the opposite parties in the writ petition.

2. I have heard Counsel for the parties.

3. Shri N.K. Seth, learned Senior Advocate, who appears for the applicant-petitioner has submitted that the order is liable to be reviewed because:

I. The proceedings arise out of an application u/s 28 of the U.P. Land Revenue Act. By the judgment sought to be reviewed, directions have been issued to treat this application filed by the contesting respondent u/s 41 of the U.P. Land

Revenue Act also. This according to the learned Counsel is an error apparent on the face of the record as an application u/s 41 is required to be accompanied by certain documents which have not been annexed to the original application and therefore it cannot be treated as one u/s 41 also.

II. A large number of authorities were cited on behalf of the applicant at the time of hearing of the writ petition which have not been discussed. It has only been observed that it is not considered necessary to consider them in view of the order that has been passed.

4. Elaborating further on the power of this Court in a review petition, the learned Counsel has referred to the following judgments:--

A. Commissioner of Sales Tax, J and K and Others Vs. Pine Chemicals Ltd. and Others,

B. Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs.,

C. Union of India v. Namit Sharma, 2013 (10) SCC 359 : 2014 (102) ALR 28 (Sum) (Pr. 21,38,39)

D. S. Nagaraj and Others Vs. State of Karnataka and Another,

E. Green View Tea and Industries Vs. Collector, Golaghat, Assam and Another,

5. Shri M.A. Khan, Learned Senior Counsel, who represents the opposite party has submitted that the order sought to be reviewed does substantial justice between the parties. Even otherwise, the order suffers from no error apparent on the face of the record that would call for review of the same. The review application therefore deserves to be dismissed.

6. The authorities cited on behalf of the applicant are on the scope of a review petition. In the case of Commissioner of Sales Tax Jammu and Kashmir v. Pine Chemical Ltd. and another it has been held that reliance upon a judgment which has been set aside amounts to an error apparent on the face of the record and on this account a judgment can be reviewed.

7. In the case of Inderchand Jain v. Moti Lal it has been held that an application for review would lie when the order suffers from an error apparent on the face of the record and permitting the same to continue will lead to failure of justice. Paragraph 8 of the said judgment is reproduced below:--

8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In Rajendra Kumar v. Rambai this Court held: (SCC p. 514, para 6)

6. The limitation on exercise of the power of review are well settled.

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 permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.

8. In *Union of India v. Namit Sharma* it has been stated in paragraph 21--

..... if a reasoning in the judgment under review is at variance with the clear and simple language in a statute, the judgment under the review suffers from a manifest error of law, an error apparent on the face of the record, and is liable to be rectified. Hence in these review petitions, we have to decide whether the reasoning and direction in the judgment under review is at variance with the clear and simple language employed in the different provisions of the Act and accordingly whether the judgment under the review suffer from manifest error from law apparent on the face of the record.

In paragraph 39 of the said judgment it has been held and on an application for review a Court can reverse or modify its decision on the ground of mistake of law or fact.

9. The next judgment, namely in the case of *Green View Tea & Industries v. Collector, Golaghat, Assam and another*, is a case where the review application filed, was dismissed. The Apex Court allowed the appeal, set aside the judgment and remanded the matter for disposal in accordance with law, relying upon paragraph 36 of the judgment in the case of *N. Nagraj* which paragraph is being extracted below.

It is the duty of the Court to rectify, revise and recall its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of facts and that implementation of those orders would have serious consequences. An act of Court should prejudice none. "Of all these things respecting which learned men dispute", said Cicero, "there is none more important than clearly to understand that we are born for justice and that right is founded not in opinion but in nature". This very idea was echoed by James Madison (*The Federalist*, No. 51, p. 352). He said:

Justice is the end of government. It is the end of the civil society. It ever has been and ever will be pursued, until it be obtained or until liberty be lost in pursuit.

10. From the judgments aforesaid it can be summarized that an application for review lies and is liable to be allowed if the order sought to be reviewed suffers from an error apparent on the face of the record and permitting the same to continue would had to failure of justice.

(Emphasis supplied)

11. Having perused the judgment cited by the learned Counsel for the applicant, I have also examined the original record of the writ petition. In the context of this case, it is thought fit to refer to grounds S, T and V which were taken by the

review petitioners in the writ petition filed by them, wherein the judgment sought to be reviewed was passed.

12. These grounds are being reproduced below, for ready reference:--

(S) Because in any case there was no dispute regarding correction of map and alleged dispute amounts to boundary dispute of the concerned Khasra Plots which is beyond the scope of section 28 of the Land Revenue.

(T) Because the remedy for the dispute, if any, was u/s 41 of the Land Revenue Act and not u/s 28 of the Act, and as such the entire proceedings were vitiated under law.

(V) Because the order for delivery for possession passed in proceedings u/s 28 of the Land Revenue Act as well as subsequent orders of the opposite party No. 2 for delivery of possession and dispossession of the petitioner from the part of its own land is illegal and without jurisdiction and are beyond the scope of section 28 of the Act.

13. From a perusal of the grounds aforesaid as also the averments made in the writ petition, it is clear that although the writ petition arose out of an application u/s 28 of the U.P. Land Revenue Act, which are for correction of the map, it was the case of the petitioner (applicant in the review application) that the actual dispute between the parties was in fact a boundary dispute. It is true that the opposite party in the writ petition had only filed an application for correction of map but since this Court while deciding the writ petition came to the conclusion that in fact, a boundary dispute was involved which could be finally determined only by means of an application u/s 41 of the Act, the Court has, with a view of doing substantial justice between the parties, remanded the matter with the direction that the case be treated to be one u/s 41 of the Act also. Needless to say that in case the proceedings u/s 28 for the correction of map were finally decided and it was found that the map required correction, and subsequently, it was realized that this correction in the map would also necessitate raising of a boundary dispute the same could no doubt have been done. This would have led to prolonging the litigation between the parties. In the said circumstances therefore, this Court was well within its jurisdiction to issue appropriate directions so as to shorten the litigation between the parties. In any case no prejudice can be said to have been caused to the petitioner-applicant by the said direction and for the said reason, the same, in my opinion is not a good enough ground for reviewing the judgment.

14. As regards the submission made by the learned Counsel for the applicant that a large number of authorities cited by him were not considered, it is sufficient to record that the judgment under review clearly mentions that a lot authorities were cited by the Counsel for the both the parties but it was found unnecessary to consider the same in view of the order that was passed, namely, directing that the original application u/s 28 of the Land Revenue Act be treated to be one u/s 41 also. The order further directs that" a copy of the complete

survey map will be provided to all the parties and they will be granted time to file objections. This survey map is one of the documents which, according to the learned Counsel for the applicant, is necessarily to be filed along with an application u/s 41 of the Land Revenue Act. This, in my view, cures any procedural defect in so far as noncompliance of the mandatory requirement of documents required to be annexed with an application u/s 41 of the Act is concerned.

15. In view of the aforesaid discussion, there is no absolutely no doubt in my mind that the order sought to be reviewed is one which has been passed in exercise of equity jurisdiction under Article 226 of the Constitution of India and it issues directions that would lead to a quick and complete resolution of the dispute between the parties. It is settled law that in exercise of jurisdiction under Article 226 of the Constitution of India the Court is competent to mould the relief so as to do complete justice between the parties. This is the object of the order sought to be reviewed. Under the circumstances and for the reasons aforementioned, the review petition lacks merit and is dismissed.