

(2005) 04 AP CK 0098

In the Andhra Pradesh High Court

Case No : Rev. W.A.M.P. No. 1791 of 2004 in WA No. 1710 of 2002 and Rev. W.A.M.P. No. 1792 of 2004 in WA No. 1626 of 1998

Mudiki Bhimesh Nanda

APPELLANT

Vs

Tirupathi Urban Development Authority and Others

RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2005) 4 ALD 792 : (2005) 5 ALT 41

Hon'ble Judges : Goda Raghuram, J;G. Yethirajulu, J

Bench : Division Bench

Advocate : S.R. Ashok, for S. Janardhan Reddy, for the Appellant; Government Pleader for Assignments for Respondent Nos. 2 to 5 in Rev. W.A.M.P. No. 1791 of 2004 in WA No. 1710 of 2002 and in Rev. W.A.M.P. No. 1792 of 2004 in WA No. 1626 of 1998, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—These review petitions are filed by Sri Mudiki Bhimesh Nanda, the first respondent in Writ Appeal No.1710 of 2002 and the sole respondent in Writ Appeal No. 1626 of 1998 against the common judgment of this Court dated 27-4-2004 praying to review the said judgment by setting aside the same.

2. Since the petitioner in both the review petitions is one and the same and the issues involved in the petitions are inter- related, they are clubbed and this common order is passed.

3. The review petitioner raised so many grounds far beyond the scope of Order 47 Rule 1 C.P.C. by trying to impress upon this Court the necessity of reviewing the judgment dated 27-4-2004 by narrating the sequence of events relating to the case and pointing out errors committed by this Court in coming to various conclusions. In the light of various contentions raised by the review petitioner, it has to be considered whether there is any force in any of the grounds to set aside the judgment of this Court through review.

4. The matrix of facts leading to the filing of these review petitions is briefly as under:

5. The petitioner is a resident of Tirupathi. He was granted an eksal lease (lease for one year) of the schedule land on 31-10-1974 for an extent of Ac.4-17 guntas of agricultural land in S. No. 329 of Avilala Village of the erstwhile Chandragiri Taluk, Chittoor District. The lease was renewed from time to time till 1387 Fasli. On a recommendation made by the Tahsildar, the Collector reclassified the land from "tank poramboke" to "burial ground poramboke". The petitioner filed a writ petition seeking a direction from the High Court to consider his application for converting the land as assigned land and the High Court gave the direction as prayed for. The Commissioner, Land Revenue rejected the request of the petitioner for assignment of the land. The petitioner preferred a revision against the order of the Commissioner, Land Revenue to the Government of Andhra Pradesh. The Government issued G.O.Ms. No. 492 dated 25-5-1994 directing the Collector, Chittoor to consider the application of the petitioner for assignment of the land in question after taking into consideration the eligibility of the writ petitioner. Since the Collector did not take any action in pursuance of the Government Order, the petitioner filed W.P. No. 27800 of 1995 before this Court and this Court through the order dated 12-12-1995 directed the Collector to consider the claim of the petitioner with reference to G.O.Ms. No. 492 dated 25-5-1994 within a period of four months from the date of receipt of the copy of the order of this Court. In pursuance of G.O.Ms. No. 492 dated 25-5-1994 the Collector passed an order directing alienation of the land in favour of Tirupathi Urban Development Authority (TUDA). The Collector also passed appropriate orders on 25-1-1997 mentioning that the land cannot be assigned to the petitioner. Questioning the order of the Collector the petitioner filed W.P. No. 2079 of 1997 and a learned Single Judge of this Court allowed the writ petition through the judgment dated 13-11-1997 directing the Collector to assign the land in question in favour of the petitioner. The Government being aggrieved by the order of the learned Single Judge preferred Writ Appeal No. 1626 of 1998 challenging the validity and legality of the said order. During the pendency of the said appeal the Government filed a Memo seeking permission to withdraw the appeal and accordingly a Division Bench of this Court passed an order on 5-9-2000 dismissing the appeal as withdrawn. Subsequently, on 26-12-2001 the respondents filed an application covered by W.A.M.P. No. 2021 of 2002 requesting the Court to recall the order of the Division Bench dated 5-9-2000 by setting aside the order of dismissal of the writ appeal. The TUDA also filed W-A. No. 1710 of 2002 questioning the order of the learned Single Judge directing to set aside the assignment made by the Collector to TUDA. This Court heard the recall petition as well as the writ appeals on merits and passed the impugned order on 27-4-2004. Hence, the present review petitions.

6. The following are the contentions raised by the review petitioner touching upon the facts:

- (1) The Collector granted D-form patta in favour of the petitioner through the proceedings dated 13-3-1978. The Tahsildar, Chandragiri Taluk deliberately failed to implement the order of the Collector.
- (2) The order of the Tahsildar dated 22-2-1982 cancelling the lease of the petitioner was never communicated to him and it is not tenable under law and contrary to the proceedings of the Collector.
- (3) The land which was in his possession by virtue of lease was never resumed by the revenue authorities. Therefore, the petitioner could not prefer any appeal against the alleged cancellation.
- (4) No finding was given by the Tahsildar in his proceedings dated 22-2-1982 that the petitioner was not a landless poor. The Tahsildar attempted to re-classify the land from "tank poramboke" to "burial ground" on the ground that the petitioner was not cultivating the land.
- (5) The Tahsildar did not give any opportunity to the petitioner before re-classifying the land. The petitioner challenged the re-classification of the land before the Commissioner of Land Revenue and also filed a revision petition before the Government seeking re-classification of the land as "tank poramboke" and assignment of the same to him. The Government issued G.O. Ms. No. 492, Revenue (Assignment-4) Department, dated 25-5-1994 setting aside the order of the Collector dated 12-10-1982 and directing the Collector to grant assignment of the land after verifying the eligibility of the petitioner as belonging to political sufferer's family. The petitioner filed Writ Petition No. 27800 of 1995 before this Court questioning the inaction of the revenue authorities in considering the disputed land as assignable land under political sufferer's quota.
- (6) The Collector while not disputing the eligibility of the petitioner for assignment denied the same through the order dated 25-1-1997 on totally extraneous considerations.
- (7) The Collector who directed the Tahsildar through the order dated 13-3-1978 to assign the land to the petitioner cannot seek to rely upon a Government Order which was issued much later to deny the assignment to the petitioner. The prohibition of assignment of the land to the petitioner on the ground that it is "tank poramboke" would have equally applied when the District Collector transferred the land to TUDA.
- (8) Since the petitioner was granted assignment of the land as early as in 1978, the mere delay in granting freedom fighter's pension to his father would not vitiate the said assignment.
- (9) The respondents resorted to make allegations against his father and the petitioner cannot be made a scapegoat for the alleged acts of omission and commission by his father.
- (10) The petitioner was unemployed when he initially sought the lease of the

land and the assignment was made to him. His claim for assignment did not solely depend upon his unemployment, but also a fact that he belongs to a political sufferer's family and large family to support.

(11) The land in question is surrounded by housing colonies is no ground for denying the assignment to the petitioner as the assignment was made to him decades before the housing colonies came up in the neighbourhood.

(12) The revenue authorities sought to select the land only on relying upon the Government Memo No. 134244/ VI/88-1 dated 17-12-1988 prohibiting assignment of land in 20 Mandals, including Tirupajhi Mandal to deny the benefit of the petitioner by refusing to abide by G.O. Ms. No. 492 dated 25-5-1994 issued by the Government and the orders of the High Court requiring them to assign the land to the petitioner.

(13) The land is in continuous and uninterrupted possession and enjoyment of the petitioner since 1974 and the said fact was also endorsed by the Advocate Commissioner appointed by the Civil Court, Tirupathi in O.S.No. 179 of 1997.

(14) There was no occasion for the petitioner to prove that he was cultivating the land either personally or through his relations as the revenue authorities never sought for such proof from him.

(15) The District Revenue authorities were responsible for the deliberate delay and ultimate denial of assignment of the land to the petitioner contrary to the directions given by the Government.

(16) The revenue authorities cannot be permitted to take advantage of their own intransigent and disobedient attitude in following the orders of the Government and denying the petitioner the assignment of the land on the ground that surrounding lands have been developed.

(17) Since the Tahsildar mentioned in the status report that the land is surrounded by college, dwelling houses, Saibaba Temple, residential houses etc., it clearly established that the objection for assignment of the land on the ground that it is a "tank poramboke" has no merit at all.

(18) The Collector acted contrary to the clear directions of the Government in G.O.Ms. No. 492 dated 25-5-1994 without confining his power to satisfy himself about the eligibility of the petitioner. The Government considered all the objections and observations made by the Collector and issued G.O. Ms. No. 378, Revenue (Assignment-IV) Department, dated 3-6-2000 directing the Collector to assign the land to the petitioner. But the District Revenue authorities played fraud on the Government and the Court. The District Collector despite recording in his orders that the petitioner satisfied the eligibility criteria, deliberately refused to assign the land for the reasons that were totally irrelevant.

(19) The observation of this Court that the petitioner sold away part of the disputed land as house plots to 13 persons under Sale Deed Nos. 330 to 342

dated 23-1-1982 is not tenable in the absence of specific allegations to that effect in the counter-affidavit. None of the reasons mentioned at Page Nos. 15 and 16 of the judgment, which were relied on by the District Administration, were never communicated to the petitioner and those allegations have no relevancy to consider the recall petition.

(20) The fact that the petitioner's father was a Gazetted Officer and was getting pension after retirement is totally irrelevant in the context of assignment of land as a freedom fighter.

(21) The parents of the petitioner never sold any portion of the disputed land. There is nothing in the rules, which militate against grant of land to the legal heir of a freedom fighter on the ground that the legal heir is employed.

(22) The entry relating to the disputed land in the prohibitory order book pursuant to the Memo issued by the Government of Andhra Pradesh on 17-12-1998 cannot be considered to override the order of the Government in G.O. Ms. No. 492 dated 25-5-1994.

(23) The finding of the Court that the writ petitioner played fraud with the connivance of the officials of the Secretariat of Andhra Pradesh is baseless and unfounded and the criticism that the petitioner did not make TUDA as a party respondent is not warranted.

(24) The remark of the Court for non-impleading of the Government in the Civil Court is unwarranted.

(25) The observations of the Court in Para 36 of the judgment amounts to practically sitting in judgment over the findings recorded by the learned Single Judge by virtue of withdrawal of the writ appeal by the Government.

7. In addition to the above grounds touching upon the facts, the petitioner also attacked the findings of this Court on many factual aspects by contending that the respondents did not raise such objections or they were borne out by record. If there are errors in the judgment of the Court in appreciating the facts while giving finding on each and every aspect, those findings cannot be reversed by way of a review and the remedy, if any, available would be before a higher forum.

8. Order 47 C.P.C. deals with the procedure for review of an order or a judgment given by a Court of Law. Order 47 Rule 1 C.P.C. deals with the filing of an application for review of a judgment, decree or order and it reads as follows:

Order 47 Rule 1: Application for review of judgment :-(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 judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case of which he applies for the review.

Explanation:-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. (Inserted by Act No. 104 of 1976 w.e.f. 1-24977)

9. Order 47 Rule 1 C.P.C. enumerates that review of judgments may be allowed on three grounds viz.,

(1) discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made; or

(2) some mistake or error apparent on the face of the record, or

(3) for any other sufficient reasons (which has been interpreted to be analogous to the other reasons specified above).

10. In *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others*, , the Supreme Court held that a power of review is not to be confused with appellate power, which may enable an Appellate Court to correct all kinds of errors committed by the subordinate Court. Whereas, the power of review may be exercised on the discovery of new and important matter or evidence which the person seeking review could be exercised on the ground that the decision was erroneous on merits. That would be a province of Court of appeal.

11. In *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, , the Supreme Court held that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment will be reconsidered only where a glaring omission or patent mistake or like grave error has crept into by judicial fallibility. A judgment based on factual foundation is not open to review merely because some alternative situations were not presented before the Court.

12. There is a distinction between a mere erroneous decision and a decision, which could be characterized 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. (See *Thungabhadra Industries Ltd. Vs.*

The Government of Andhra Pradesh,)

13. In *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, , the Supreme Court held that an error apparent on the face of 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.

14. In *Moran M.B. Catholicos v. Mar Poulouse* AIR 1954 SC 526, the words "any other sufficient reason" must mean a reason sufficient on grounds, at least analogous to those specified in the rule. The misconception of the Court must be regarded as sufficient reason analogous to an error on the face of the record.

15. In *Lily Thomas v. Union of India* AIR 2000 SC 1650, the Supreme Court while considering the scope of Order 47, Rule 1 CPC held as follows:

The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.

16. In *Parsion Devi and Others Vs. Sumitri Devi and Others*, , the Supreme Court, while considering the scope of Order 47, Rule 1 C.P.C., held as follows:

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". 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. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

17. In *Board of Control for Cricket, India and Anr. v. Netaji Cricket Club and Ors.* 2005 (1) DT (SC) 35, the Supreme Court while dealing with the aspect relating to review, observed as follows:

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 sufficient reason.

... 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 "a sufficient reason" on Order 47, Rule 1 of the Code is 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*".

18. The above authorities make the position clear that under what circumstances an application for review can be entertained. Keeping in view the above legal position on the scope of the review, we would like to refer to the other contentions raised by the petitioner and verify whether they come within the scope of review:

(1) The Court ought to have seen that the Government withdrew the appeal of its own volition and accordingly the orders passed in W.P.No.2097 of 1997 have attained finality.

(2) The Court ought to have seen that there is no justification or any valid reason made out for permitting the Government to withdraw its request for withdrawal of the appeal viz., W.A. No.1626 of 1998.

(3) The Court erred in allowing W.A. No. 1626 of 1998 itself while deciding W.A.M.P. No.2021 of 2002 filed by the respondents for restoring the appeal.

(4) The Court ought to have seen that only the application for restoration of the writ appeal was heard to consider whether any sufficient grounds were made out by the respondents to restore the appeal to the file of this Court. As no arguments were advanced on merits, the writ appeal could not have been disposed of on merits. At the conclusion of the hearing of W.A.M.P.No.2021 of 2002 it was specifically submitted by the Senior Counsel appearing for the petitioner that no submissions have been made on merits of the case and that they would argue the case on merits only if the WAMP for revival of writ appeal is ordered. Therefore, the disposal of the writ appeal is not correct in law.

(5) The Court ought to have seen that the respondents gave no valid and cogent reasons for recall of the orders passed in W.A. No. 1626 of 1998 and restore the appeal.

(6) The respondents placed more reliance on hypothetical happenings and sought to recall the orders dated 5-9-2000.

(7) The Court erred in stating that the petitioner played fraud on the Government by influencing the official machinery that prepared the note on the basis of which G.O. Ms. No.378, dated 3-6-2000 was issued.

(8) The Court ought to have seen that any mistakes or typographical errors in the note prepared by the Government machinery cannot be attributed to or held

against the petitioner.

(9) The Court ought to have seen that the District Collector was very much aware of the orders passed by the Government to withdraw the writ appeal.

(10) The Court ought to have seen that the respondents have not made out any case for recall of the order whereby the respondents were permitted to withdraw the writ appeal.

(11) The observation of the Court that the Collector issued proceedings on 13-3-1978 directing the Tahsildar to issue D-form patta in respect of the disputed land is an error apparent on the face of the record and requires to be reviewed by this Court.

(12) The respondents cannot convert a recall petition into a commission of inquiry and rely on all the allegations made in their correspondence as the plank for recall and furthermore call upon the petitioner to produce evidence to counteract such surmises and conjectures passing in their mind.

19. Sri S.R. Ashok, the learned Senior Counsel representing the review petitioner repeatedly asserted that he advanced arguments by referring to all the facts in the recall petition and he proceeded on the assumption that the arguments in the main matter would be advanced after the Court passing appropriate orders in the recall petition. He therefore submitted that an opportunity has to be given to the petitioner to advance arguments on certain aspects in support of the contentions of the petitioner and in rebutting the points raised by the respondents.

20. When the recall petition came up for hearing, we indicated to the Counsel that the Bench would consider the recall petition along with the merits of the appeal and if the Court finds that there are no merits in the appeal, appropriate orders would be passed in the recall petition. In pursuance of the above indication given by the Court, both parties advanced arguments touching upon the merits of the appeal by referring to all the relevant documents and the pleadings of the respective parties. During the course of hearing, this Bench also expressed that it would be appropriate if the Government produces the original record relating to the issuance of the Government Order assigning the land in favour of the petitioner. Accordingly, the relevant record has been produced by the Government and the arguments were also advanced with reference to those original records. The Bench also happened to verify the original records and got certain clarifications from the learned Advocate General. The noting of the points raised by both parties touching upon the merits of the matter also made the Bench to gain an impression that the Counsel advanced arguments touching upon the merits of the matter and accordingly the judgment was pronounced by this Bench answering all the points raised by both parties before arriving at a conclusion that there are sufficient grounds to allow the appeal after recalling the order of dismissal of the appeal on account of the withdrawal Memo filed by the Government.

21. There is no error apparent on the face of the judgment. The grounds urged by the petitioner do not warrant substitution of our view, setting aside the impugned order. There is no discovery of new matter or evidence, which was not within the knowledge of the petitioner, and there is no other sufficient reason to review the judgment. If the petitioner is aggrieved by the findings of this Court, the remedy is not review. The review petitions are not maintainable and they are liable to be dismissed.

22. In the result, the review petitions are dismissed.