
(2009) 05 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition No. 3726 (W) of 2008

Smt. Diblu Naskar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 151
Constitution of India, 1950 — Article 12, 132, 133, 134, 136
Hindu Marriage Act, 1955 — Section 13B, 17
Penal Code, 1860 (IPC) — Section 494

Citation : 113 CWN 845

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Kalyan Bandopadhyay and Ms. Chaitali Bhattacharyya, for the Appellant; Subrata Mukhopadhyay for the Respondents 1 to 9 except 2, Mr. Joydeep Kar for the Respondent No. 2, Mr. S. Bhattacharjee for the Respondent No. 10, for the Respondent

Final Decision : Allowed

Judgement

Dipankar Datta, J.—The Office of the Additional District Sub-Registrar, Falta (hereafter the ADSR office) is presently functioning from an old dilapidated building owned by a private party. The building, according to the official respondents, is more than a century old and no repairs have been effected by the owner for a long time. In fact the counter affidavit of the official respondents reveals that the owner is not to be found and since 1975, no rent is being accepted.

2. The Directorate of Registration and Stamp Revenue had initiated process to computerize all the registration offices in the State. Since the accommodation at Falta was found to be inadequate for implementing the project of computerisation, the Director was on the look out for an alternative accommodation for the ADSR office.

3. In course of searching for a suitable building, the ADSR office received an offer from the writ petitioner Diblu Naskar (hereafter Naskar) conveying willingness to let out the ground and first floors of her building at Fatepur, Police Station Falta, South 24 Parganas for accommodating the ADSR office. A proposal had been initiated by the ADSR office for shifting it to the building offered by Naskar. The District Magistrate, South 24 Parganas recommended the move which was accepted by the Inspector General of Registration and Commissioner of Stamp Revenue. By a Government Order bearing No.1852-F.T. dated 13.11.2006, administrative approval was accorded for shifting of the ADSR office to Fatehpur.

4. Since despite such administrative approval the ADSR office had not been shifted to Fatepur, Naskar had the occasion to move a writ petition before this Court being W.P. No. 15917(W) of 2007. The writ petition was disposed of by Hon"ble Pal, J. on 14.9.2007 by passing the following order:

"In the writ petition the petitioner has prayed for a direction upon the respondents to comply with the administrative approval which was intimated by the Assistant Secretary, government of West Bengal by letter dated 13th November, 2006.

Learned advocate for the State submits on instruction that pursuant to the administrative approval the office of the Additional District Sub-Registrar shall be shifted shortly.

Having heard the learned advocates of the parties and considering the facts and circumstances of the case, the writ petition is disposed of by directing the respondents particularly the Additional District Sub-Registry Officer, the respondent No.2 to shift the office of the Additional District Sub-Registrar from Falta to Fatepur by 30th November, 2007.

Since the respondents were not called upon to file affidavits controverting the allegations, the allegations made in the writ petition are deemed not to have been admitted by them.

There will be no order as to costs."

5. The order dated 14.9.2007 was not complied with. This prompted Naskar to serve a notice on the official respondents through her advocate dated 12.12.2007 requesting them to implement the order forthwith failing which appropriate proceedings under the Contempt of Courts Act, 1971 would be initiated.

6. In response to such notice, Naskar's advocate was served with Memo No.1452 dated 17.12.2007 issued by the District Registrar, South 24 Parganas. Perusal of the same reveals that a public interest litigation bearing AST No. 2232 of 2007 had been moved before this Court challenging the decision of the respondents to shift the ADSR office from Falta to Fatepur which was pending and that the Junior Standing Counsel, Government of West Bengal advised on

24.11.2007 not to shift the ADSR office until further order is passed by the appropriate Court. It also appears that reference was made to another writ petition [W.P. No.25388 (W) of 2007] : Debasis Mallick v. State of West Bengal & Ors. which had been disposed of by Hon"ble Dutt, J. on 19.11.2007 granting liberty to that petitioner (hereafter Mallick) to make a representation before the Principal Secretary, Finance Department, Government of West Bengal within a period of 7 days and if made, the same was directed to be disposed of after granting opportunity of hearing to him. It was further directed by the Court that till such time a decision on the representation of Mallick is given, the ADSR office shall not be shifted to Fatehpur.

7. Mallick submitted a representation dated 5.12.2007. In that representation he stated that on 5.7.2006 a meeting was held at the Gram Panchayat Bhavan at Fatepur in the presence of responsible officers of the State Government, the President of the South 24 Parganas Zilla Parishad, and Members of Parliament and Legislative Assembly of the concerned constituency and in such meeting it was decided that the ADSR office should be shifted to some other place. Mallick had been requested to construct a new building so that the ADSR office could be shifted there. Such request was not made to him in writing but was a verbal one. He incurred substantial expenses for construction of building to accommodate the ADSR office on the assurance given by the respondents in his writ petition. The building was duly inspected and he was told that the ADSR office would be shifted soon. However in the last week of September, 2007, he came to learn that the ADSR office would be shifted to a remote place at Fatehpur. Since assurance had been given to Mallick that the ADSR office would be shifted to the site offered by him and based on such assurance construction had been raised by him but the respondents were proposing to shift the ADSR office to Fatehpur which is at a distance of about 18 kms. From the town, he had the occasion to move the writ petition before this Court referred to above. A prayer was accordingly made in the representation to shift the ADSR office to the building constructed by him.

8. The representation of Mallick was taken up for consideration by the Principal Secretary, Finance Department, Government of West Bengal. While considering it, the Principal Secretary had the occasion to peruse the writ petition filed earlier by Naskar and appears to be well and truly aware of the order dated 14.9.2007 passed by Hon"ble Pal, J.; yet, without putting Naskar on notice and without granting her any opportunity of hearing he proceeded to dispose of the representation filed by Mallick by holding that the accommodation which he proposed to provide was most suitable and definitely superior than that proposed by Naskar. Since there was no written agreement between the State Government or any other authority on its behalf and any of the private parties regarding shifting of the ADSR office to the premises offered by him/her and since in the matter of shifting of the ADSR office neither of the private parties could have any claim and decision in the matter ought to be guided by the requirement of the administration and public interest, which should always get precedence over

private interest, he held as follows:

"14. I, accordingly, hold that the accommodation offered by Shri Debasis Mallick is distinctly more suitable than the accommodation offered by Smt. Diblu Naskar for the purpose of shifting of the office of the ADSR, Falta. The Government order dated 11.11.2006 should be cancelled and approval should be accorded for shifting of the office of the ADSR, Falta to the building offered by Shri Debasis Mallick.

In view of the above, appropriate steps should be taken by filing a recalling application against the order dated 14. 09.2007 passed by the Hon"ble Justice Soumitra Pal.

The matter is thus disposed of."

9. On 14.1.2008, the Deputy Commissioner of Stamp Revenue (Legal) West Bengal vide Memo No. 171/IM/157/07 forwarded to Naskar a copy of the order passed by the Principal Secretary dated 26.12.2007.

10. In this petition, Naskar while assailing the order dated 26.12.2007 passed by the Principal Secretary on diverse grounds has claimed, inter alia, the following main relief:

(a) An order do issue setting aside the order dated 30th November, 2007 passed by this Hon"ble Court in writ petition being W. P. No.25338 (W) of 2007 (Debasis Mallick v. State of West Bengal & Ors.)

(b) A Writ of and/or in the nature of Mandamus do issue directing the respondent authorities to forthwith rescind, recall, withdraw and/or cancel the purported Memo No.171/1-M-157/ 07, dated 14th January, 2008 along with the purported order dated 26th December, 2007 passed by the Principal Secretary, Finance Department, Government of West Bengal, the respondent No.2 herein being collectively annexure "P/10" to this Writ Petition without any delay whatsoever;

(c) A Writ of and/or in the nature of Certiorari do issue directing the respondents to transmit the entire records forming the basis of the issuance of the purported Memo No.171/1-M-157/ 07, dated 14th January, 2008 along with the purported order dated 26th December, 2007 passed by the Principal Secretary, Finance Department, Government of West Bengal, the respondent No.2 herein being collectively annexure "P/10" to this Writ Petition and to certify them and on being so certified quash the same;

(d) A Writ of and/or in the nature of Prohibition prohibiting the respondents from giving any effect and/or further effect to the purported Memo No. 171/1-M-157/07, dated 14th January, 2008 along with the purported order dated 26th December, 2007 passed by the Principal Secretary, Finance Department, Government of West Bengal, the respondent No.2 herein being collectively annexure "P/10" to this Writ Petition in any manner whatsoever;

11. Mr. Kar, learned counsel representing the Principal Secretary objected to

maintainability of the writ petition at the outset. According to him, neither can the High Court issue a writ to another High Court nor can a Bench of a High Court issue a writ to a coordinate bench of that High Court is settled law. He relied on the decision in *Rupa Ashok Hurra Vs. Ashok Hurra and Another*, support of such submission and contended that no order in terms of prayer (a) of the writ petition can lawfully be passed by me since I have no power or authority to set aside a decision of a coordinate bench.

12. He further contended that even if Naskar was not a party to the writ petition filed by Mallick, she had the right to file an application for review of the order dated 30.11.2007 and that an independent writ petition praying for setting aside of an order passed by a Bench of this Court having coordinate jurisdiction would not be maintainable. In support of such proposition, the decisions in *National Housing Cooperative Society Limited v. State of Rajasthan & Ors.*, reported in (2005)12 SCC 149 and *Ram Janam Singh Vs. State of Uttar Pradesh and another*, were relied on.

13. The decision in *K. Ajit Babu and others Vs. Union of India and others*, was relied on to contend that right to review is available to an aggrieved person on restricted grounds mentioned in Order 47 of the CPC (hereafter CPC) and within the time stipulated but care must be taken by the concerned Court/Tribunal to ensure that in the guise of review, appellate powers are not exercised. This is necessary because public policy demands that there should be an end to law suits.

14. In support of the proposition that the expression "person aggrieved" used in Rule 1 of Order 47, CPC is wider in scope and amplitude than the expression "party" used in Rule 2 thereof and that a review petition is maintainable at the instance of a party aggrieved though he is not a party to the original proceedings, he relied on the decision in *Shapoorji Data Process Limited v. Amir Trading Corporation Ltd.*, reported in AIR 2003 Bombay 228.

15. The decision reported in 1961 (2) All ER 504 : *Attorney General of the Gambia v. Njie* was relied on by him for tracing the meaning of the expression "person aggrieved". In the said decision, it has been held that it would include not only a person who is a party to a lis and is adversely affected but it would also include a person who had a genuine grievance because an order had been made which prejudicially affects his interest.

16. The objection on the maintainability point was concluded by him by submitting that principles underlying Order 47 of the CPC would apply to proceedings under Article 226 of the Constitution and, therefore, Naskar considering himself to be a person aggrieved ought to approach Hon'ble Dutt, J. by filing a review petition. Reliance in this connection was placed on the Division Bench decision in *Smt. Bidya Devi Vs. Commissioner of Income Tax and Others*,

17. Since Mr. Kar was also called upon to address the Court on merits of Naskar's claim, he advanced the argument that selection of a site for shifting the

ADSR office is purely an administrative function and, therefore, the Principal Secretary, Finance Department is best suited to decide as to whether the site offered by Mallick ought to be preferred to the site offered by Naskar or not. According to him the Principal Secretary personally inspected the sites offered and upon application of mind came to the considered finding that the site offered by Mallick is best suited to accommodate the ADSR office and such a decision would not be amenable to judicial review.

18. It was further contended by him that even after administrative approval was accorded vide order dated 13.11.2006, nothing was finalised between the Government and Naskar regarding the terms and conditions of hiring the building offered by her. Since the parties had not arrived at any agreement, no right accrued in favour of Naskar to claim that the ADSR office ought to be shifted to Fatehpur. The Government, therefore, acted within its right to order cancellation of the administrative approval and to proceed to look for the best possible site on offer for accommodating the ADSR office.

19. The decision in D. Ganesh Rao Patnaik and Others Vs. State of Jharkhand and Others, was relied on by him in support of the proposition that as a principle of law, there is no legal bar or prohibition against an administrative body in seeking to review its earlier decision. He, therefore, contended that the Principal Secretary did have the authority to review the administrative approval granted by the order dated 13.11.2006 and was thus justified, in the changed circumstances, in observing that the said administrative approval ought to be cancelled. He, accordingly, prayed for dismissal of the writ petition.

20. Mr. Bandopadhyay, learned senior counsel appearing for Naskar addressed me first in support of maintainability of the petition and thereafter on merits of the petition.

21. For maintaining prayer (a) of the petition, he placed reliance on the Constitution Bench decision in Shivdeo Singh and Others Vs. State of Punjab and Others, . According to him, in that decision the Apex Court declared the law that a second writ petition before the High Court praying for setting aside of an order passed by it on an earlier writ petition at the instance of a person who was not a party to the same would be maintainable if he establishes that the order passed on the former petition has prejudicially affected his rights.

22. The decision in Pohla Singh @ Pohla Ram (d) by Lrs. and Others Vs. State of Punjab and Others, was also placed for consideration wherein similar proposition of law was laid down following the decision in Shivdeo Singh (supra).

23. He contended that the law laid down in Shivdeo Singh (supra) till a holding the field and no law contrary thereto having been laid down by the Apex Court, the petition ought not to be held not maintainable at the instance of Naskar who considers herself to be prejudicially affected by the order of Hon''ble Dutt, J.

24. The decisions in Thungabhadra Industries Ltd. Vs. The Government of Andhra

Pradesh, , Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, and Paramita Das Vs. Pranati Sarkar and Others, were placed by him for arguing the scope of review under Order 47, CPC. According to him, in a case of the present nature, lengthy arguments and placing of fresh facts would be necessary and, as such, no review petition against the order of Hon''ble Dutt, J would be maintainable in law. Question of preferring a review petition, therefore, does not and cannot arise.

25. In support of the proposition that a person who is not a party to the proceedings cannot file any application for review, he relied on the decisions in Dr. Saurabh Choudhary and Others Vs. Union of India (UOI) and Others, , Bharat Singh Vs. Sheo Parshad Giani Ram and Others, , Pujya Sindhi Panchayat Vs. Prof. C.L. Mishra and Others, , and Shri Sahjamal Ali & Ors. v. State of Assam in the Revenue Department & Ors., reported in 1995 AIHC 241.

26. It was next contended by him that the present petition ought to be held maintainable in order to avoid multiplicity of proceedings. According to him, if the objection of Mr. Kar is upheld, then Naskar would be required to approach the Court with two separate petitions viz. (i) by filing a review petition before Hon''ble Dutt, J. and (ii) by filing an independent writ petition challenging the order of the Principal Secretary dated 26.12.2007 before the appropriate Writ Court. However, if the ratio laid down in Shivdeo Singh (supra), since followed in Pohla Singh (supra), is applied, the Court would have the benefit of examining both the issues simultaneously and that would be in consonance with principles underlying Order 2 Rule 2, CPC. This being a permissible course, Naskar has the right to choose her forum and in this connection reliance was placed on the decisions in Dhannalal Vs. Kalawatibai and Others, and in LIC of India v. R. Suresh, reported in AIR 2008 SCW 2793.

27. Next, it was contended by him that Hon''ble Dutt, J. had not been apprised by the respondents in Mallick's petition that an order had been made on 14.9.2007 by Hon''ble Pal, J. directing the respondents in Naskar's petition to shift the ADSR office to Fatehpur. No appeal had been preferred there against and, therefore, the said order had attained finality. In such circumstances so long the order of Hon''ble Pal, J. subsists, no order could have validly been made on the petition of Mallick, and that should have been the submission of the respondents before Hon''ble Dutt, J. Since the Court was not apprised of the entire factual developments prior to filing of the petition by Mallick, the Court had unknowingly passed an order, plainly innocuous granting Mallick an opportunity to file a representation and directing the Principal Secretary to consider the same in accordance with law. However, this ultimately has brought to the surface two conflicting orders of this Court in respect of shifting of the ADSR office and it should be the duty of this Court to pass appropriate orders so that the position prior to the order of 30.11.2007 is restored.

28. Various passages from the decision in A.R. Antulay Vs. R.S. Nayak and Another, were relied on in support of the contention that the High Court while

exercising writ powers has plenary jurisdiction and it has inherent power to rectify its own error. Therefore, this Court having regard to the totality of the facts and circumstances which have been presented ought to interfere to set things right.

29. In reply, however, Mr. Kar while reiterating his earlier submissions contended that since Hon''ble Dutt., J. was having the determination to hear the present petition, and hence Naskar may be granted liberty to move His Lordship for its consideration.

30. Mr. Mukhopadhyay, learned Junior Standing Counsel representing the other official respondents echoed the submissions of Mr. Kar.

31. Mr. Bhattacharya, learned counsel for Mallick attended hearing on the first few days but was not present in Court when his turn to address arrived and hence I had no occasion to hear him.

32. I have heard the main parties at length and duly considered the decisions cited by them. Naskar is basically aggrieved because the order dated 26.12.2007 of the Principal Secretary, Finance Department seeks to erode the benefits flowing from the order dated 13.11.2006 issued by the Government, which has since been directed to be given effect by the order of Hon''ble Pal, J. dated 14.9.2007. Since the Principal Secretary, Finance Department could assume jurisdiction to do so upon consideration of Mallick's representation in terms of the order dated 30.11.2007 of Hon''ble Dutt, J., prayer has incidentally been made to set aside such order too.

33. I must place on record that in course of his submission, Mr. Kar in his usual fairness did not seek to justify the order of the Principal Secretary, Finance Department by contending that Naskar was not required to be put on notice and heard.

34. So far as Naskar's grievance in relation to the order dated 26.12.2007 passed by the Principal Secretary, Finance Department is concerned, I have to hold that it is genuine. The Principal Secretary was aware of the order dated 14.9.2007 of Hon''ble Pal, J. It was a mandatory order directing shifting of the ADSR office by 30.1.2007. It was not complied with. No attempt to have the order set aside or recalled was made. However, there was no loss of time in complying with the order dated 30.11.2007. The reason for difference in approach to comply with the two orders of Court is not discernible. I refuse to believe that the incumbent in the office of Principal Secretary, Finance Department who passed the order dated 26.12.2007 is so naive that granting opportunity of hearing to Naskar did not come to his mind. There could be only one reason for not hearing Naskar i.e. by passing the impugned order he wanted to create an impediment in implementation of the order dated 14.9.2007 passed by Hon''ble Pal, J. If that was not so, to be fair to the parties and to secure justice at the administrative level, he ought to have delayed disposal of Mallick's representation being faced with two conflicting orders of the Court and in the

meantime, actually should have prayed for recalling of the order dated 14.9.2007 instead of so suggesting in the concluding portion of his order dated 26.12.2007. The manner in which the Principal Secretary, Finance Department dealt with the representation of Mallick leaves a lot to be desired. Audi alteram partem rule was thrown to the wind. Apart from not giving any hearing to Naskar, nothing has been produced to suggest that she was put on notice prior to inspection of the building proposed by her. The facts speak for itself and I need not dilate on it further. The order dated 26.12.2007 has shocked the judicial conscience because exercise of power the Principal Secretary, Finance Department has been manifested by its abuse. Accordingly, I have no hesitation but to set it aside. It is ordered accordingly.

35. Now, I shall consider the objection of Mr. Kar in relation to prayer (a) of the petition.

Since Mr. Kar sought to sustain his objection by placing heavy reliance on the Constitution Bench decision in Rupa Ashok Hurra (supra) and contended that Naskar ought to approach the Court in accordance with principles underlying Order 47, CPC for review of the order dated 30.11.2007 and that a second writ petition would not be maintainable, I shall endeavour to ascertain what is the law laid down therein and further as to whether the same has any application to the facts and circumstances of the present case.

36. Ashok and Rupa had a bitter married life. A divorce suit was filed by Ashok. The suit failed before the Trial Court. The decision of the Trial Court was reversed in appeal by a learned Judge of the High Court. In letters patent appeal, the Division Bench of the High Court restored the order of the Trial Court. Proceedings travelled to the Apex Court. Two appeals were heard by the Court. The appeals were disposed of on 10.3.1997 by a Division Bench of the Apex Court comprising two Judges.

37. The decision dated 10.3.1997 is reported in Ashok Hurra Vs. Rupa Bipin Zaveri,

The main appeal (Civil Appeal No.1843 of 1997) was disposed of by passing the following order:

The appeal (filed from SLP No. 20097 of 1996) is allowed. Subject to the fulfilment of the following conditions, a decree of divorce for dissolution of marriage by mutual consent solemnised between the appellant and the respondent is passed u/s 13B of the Act. It is made clear that the decree is conditional and shall take effect only on payment or deposit in this Court of the entire sum of rupees ten lakhs by the appellant to the respondent, as ordered herein and also the cost as assessed below on or before 10.12.1997. The appellant shall pay or remit the amounts ordered before the said date, in two instalments - a sum of Rs.5 lakhs + Rs. 50, 000 (the assessed cost) as ordered hereinbelow, on or before 10.8.1997 and the balance of Rs.5 lakhs (rupees five lakhs) on or before 10.12.1997. The assessed costs required to be paid by the

appellant shall be Rs.50,000 towards the entire proceedings to the respondent. If default is made in the payment of the instalment due on 10.8.1997 together with cost, then also, this decree shall not take effect and the appeal shall stand dismissed. If the amounts ordered herein are duly deposited in this Court by the appellant, the respondent can withdraw the said amounts, without further orders. We further declare and hold that all pending proceedings, more particularly referred to in para 8 of this judgment, including the proceeding u/s 494 IPC read with section 17 of the Hindu Marriage Act, 1955 between the parties shall stand terminated, but only on payment or deposit of the amounts ordered by us in this judgment. This is made clear.

38. The other appeal was disposed of by recording that it had become academic and unnecessary in view of the final orders passed in the main appeal.

39. A review petition was later filed by Rupa which was dismissed by order dated 6.8.1997.

40. Thereafter, Rupa preferred a writ petition under Article 32 of the Constitution questioning the validity of the judgment dated 10.3.1997. The writ petition was posted for consideration before a bench of three learned Judges of the Apex Court. The Court by its order dated 5.8.1998 [reported in Rupa Ashok Hurra Vs. Ashok Hurra and Another, referred the writ petition to a Constitution Bench observing thus:

Whether the judgment of this Court dated 10-3-1997 in Civil Appeal No. 1843 of 1997" can be regarded as a nullity and whether a writ petition under Article 32 of the Constitution can be maintained to question the validity of a judgment of this Court after the petition for review of the said judgment has been dismissed are, in our opinion, questions which need to be considered by a Constitution Bench of this Court.

Some other writ petitions were also tagged to that case.

41. The question of law formulated by the Constitution Bench of the Apex Court reads thus:

2. Whether an aggrieved person is entitled to any relief against a final judgment/order of this Court, after dismissal of review petition, either under Article 32 of the Constitution or otherwise.

42. The ratio decidendi of the decision appears from paragraph 7 and 14 which are quoted below:

"7. Having carefully examined the historical background and the very nature of writ jurisdiction, which is a supervisory jurisdiction over inferior Courts/Tribunals, in our view, on principle a writ of certiorari cannot be issued to coordinate Courts and a fortiori to Superior Courts. Thus, it follows that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the same High Court; much less can writ jurisdiction of a High

Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. Though, the judgments/ orders of High Courts are liable to be corrected by the Supreme Court in its appellate jurisdiction under Articles 132, 133 and 134 as well as under Article 136 of the Constitution, the High Courts are not constituted as inferior courts in our constitutional scheme. Therefore, the Supreme Court would not issue a writ under Article 32 to a High Court. Further, neither a smaller Bench nor a larger Bench of the Supreme Court can issue a writ under Article 32 of the Constitution to any other Bench of the Supreme Court. It is pointed out above that Article 32 can be invoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in law that no judicial order passed by any Superior Court in judicial proceedings can be said to violate any of the fundamental rights enshrined in Part III. It may further be noted that the Superior Courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution.

14. On the analysis of the ratio laid down in the aforementioned cases, we reaffirm our considered view that a final judgment/order passed by this Court cannot be assailed in an application under Article 32 of the Constitution of India by an aggrieved person, whether he was a party to the case or not."

43. Having declared the law in the above terms, the Apex Court had to consider a contention advanced on behalf of learned Senior Counsel for all the parties including the Attorney General for India who appeared as *amicus curiae*. In the Court's own words, "all..... adopted an unusual unanimous approach to plead that even after exhausting the remedy of review under Article 137 of the Constitution, an aggrieved person might be provided with an opportunity under inherent powers of this Court to seek relief in cases of gross abuse of the process of the Court or gross miscarriage of justice because against the order of this Court the affected party cannot have recourse to any other forum."

44. After referring to numerous decisions, the Apex Court evolved, for the first time in India, a procedure for filing "curative petition" even after the remedy of review of a judgment of the Apex Court under Article 137 of the Constitution is exhausted. The law was then declared in the following terms:

"49. The upshot of the discussion in our view in that this Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may reconsider its judgments in exercise of its inherent power."

"51. Nevertheless, we think that a petitioner is entitled to relief *ex debito justitiae* if he establishes (1) violation of the principles of natural justice in that he was not a party to the *lis* but the judgment adversely affected his interests or, if he was a party to the *lis*, he was not served with notice of the proceedings and the matter proceeded as if he had notice, and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner.

45. It would thus appear from a perusal of the said decision that initially civil proceedings were initiated between two private parties; they had fullest opportunity of contesting subsequent proceedings initiated by either of them in various fora; a final judgment was delivered by the Apex Court on 10.3.1997; a petition for review failed; and, thereafter, by an Article 32 writ petition the Apex Court was urged to issue certiorari for setting aside its own judgment rendered on merits of the case after duly hearing the parties. In such circumstances it was held that a petition under Article 32 of the Constitution would not be maintainable, for, a judicial order passed by any Superior Court in judicial proceedings cannot be said to violate any of the Fundamental Rights enshrined in Part III and that Superior Courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution.

The law declared is therefore absolutely clear without leaving any scope of ambiguity.

46. It would be worthwhile at this stage to take note of the decision of the Apex Court in *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others*, to ascertain what constitutes a precedent. Paragraph 9 of the decision being relevant is quoted below:

"9. *****It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates-(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only on authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A

deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi."

(underlining for emphasis)

47. It must be remembered that the decision in Rupa Ashok Hurra (supra) was rendered keeping in mind the fact that the Apex Court's jurisdiction under Article 32 of the Constitution had been invoked. In proceedings under Article 32, the aggrieved petitioner in order to persuade the Court to grant relief in his/her favour must establish that a body within the meaning of Article 12 of the Constitution has infringed any of his/her rights guaranteed by Part III of the Constitution. The Constitution Bench clearly held that (i) the Apex Court is not a State or other authority within the ambit of Article 12; and (ii) a judicial order passed by a Superior Court in judicial proceedings does not violate any of the citizen's Fundamental Rights and, therefore, the petition under Article 32 would not be maintainable.

48. Article 226 though empowers the High Courts in the country to issue writs, orders and directions akin to those that may be issued by the Apex Court under Article 32, the difference between the two is well known. The High Court's power under Article 226 to issue writs may be exercised not only for the enforcement of any of the rights conferred by Part III of the Constitution but "for any other purpose". It connotes that the power of the High Court to issue writs is unfettered if clear infringement of rights is established and well-intentioned discretion is exercised to reach injustice wherever found and to do what is right in a given case. Reliance on paragraphs 7 and 14 of the decision in Rupa Ashok Hurra (supra) placed by Mr. Kar to convince me that I cannot issue a writ to a coordinate bench is considered to be misplaced since the Writ Court's power to review has been sought to be invoked and not the power to adjudicate the correctness of an order on merits passed by a learned Judge in coordinate jurisdiction. Though prayer (a) has not been appropriately framed but having regard to the submissions made before me. I am inclined to take the view that by filing the present petition relief is sought for to undo the anomalous situation resulting from two orders passed by learned single Judges on separate writ petitions, apparently conflicting and not reconcilable. The undesirable factual scenario that has emerged needs to be undone, whosoever may be responsible for the same. Process of law as well as process of this Court cannot be permitted to be abused. That a petitioner is entitled to relief ex debito justitiae if he establishes violation of principles of natural justice in that he was not a party to the lis but the judgment adversely affects his interest is recognised even in Rupa Ashok Hurra (supra) and, therefore, the right to relief claimed by Naskar for review of the order dated 30.11.2007 cannot be doubted.

49. The primary question that now requires an answer is whether a review

petition in line with principles underlying Order 47 Rule 1, CPC is the proper remedy that ought to have been pursued by Naskar or a second writ petition, apparently for review of the earlier order passed in writ jurisdiction, would be maintainable.

50. Apart from the decisions in Bharat Singh (supra), Pujya Sindhi Panchayat (supra) and Sahjamal Ali (supra) cited by Mr. Bandopadhyay, Bangalore Development Authority and etc. v. P. Anjanappa (since deceased by L.Rs.), reported in 2004 AIHC 534 is another decision rendered by the Karnataka High Court wherein it has been held that "It is now well-settled that a review application can be filed only by party to the lis in which the order sought to be reviewed has been passed. It cannot be preferred by a third party. Alternatively, the review petition cannot be filed by a party who is not a party to the suit".

51. Upon due consideration of the decisions in Bharat Singh (supra) Pujya Sindhi Panchayat (supra), Sahjamal Ali (supra) and Bangalore Development Authority (supra), I am in respectful disagreement therewith, to the effect the same have laid down the law that a person not a party to the proceedings cannot apply for review of the decree or order passed therein under Order 47, CPC. In Pujya Sindhi Panchayat (supra), the learned Judges, however, have observed that though a review may not be available under Order 47, CPC but the Court in exercise of inherent powers u/s 151 thereof may review its order. The learned Judges of the Delhi and Rajasthan High Courts proceeded on general principles of law that a decree or order against a person not party thereto is not binding on him.

52. Even though there can be no dispute with regard to this principle, there may be cases where a non-party finds himself adversely affected or prejudiced by reason of an order passed in proceedings where he had no occasion to participate not being a party. It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate Court and such leave should be granted if he would be prejudicially affected by the judgment. [see Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd., and State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another,]. There is no reason as to why the same principle may not be applied in case of an application for review under Order 47 Rule 1, CPC. An appeal with the leave of the Appellate Court being maintainable, nothing stands in the way of the trial Court to grant leave to the aggrieved person to prefer a review application, if it is satisfied that the review applicant was a necessary party to the proceedings which has been disposed of in his absence and the order affects his interest adversely. Significantly, section 114, CPC permits a person aggrieved to pursue the remedy of review against a decree or order of the nature mentioned therein to the Court which passed such decree or order. The opening words of sub-rule (1) of Rule I, Order 47 also uses the expression "Any person considering himself aggrieved", which is of wide import. Neither section 114 nor Order 47 contains any restriction that it is only a party to the proceedings that could invoke the review jurisdiction

of the Court that made the order or decree. Since sub-rule (2) of Rule 1 of Order 47 expressly refers to "party", distinction between the two is well carved and I share the view expressed in the decisions in Shapoorji Data Processing Limited (supra), Sri Sundararaja Perumal Devasthanam, Paramakudi & Ors. v. T.P. Rajaram & Ors., reported in 2000 AIHC 189 (a decision of the Madras High Court), Hanumantharayappa & Ors. v. A. Krishnappa, reported in AIR 2002 NOC 127 (Kant.) as well as the decision in Numaligarh Refinery Ltd. and Others Vs. Assam Board of Revenue and Others, wherein the learned Judge opined that "Order 47 does not contemplate a party to a suit or proceeding to seek for review, rather it permits any person aggrieved by the order to seek for review".

53. The learned Judges in Bharat Singh (supra) considered only the first ground on which review may be sought for, as provided in Rule 1(1) of Order 47 without considering the effect of the second ground. There cannot be any exhaustive enumeration of "error apparent on the face of the record" and the test is purely individualistic. It is for the particular Court that passed the order or decree to consider whether on a given set of facts, it could be said that there exists an error apparent on the face of the record warranting a review. I am minded to hold that in a clear case of a decree or order passed by a Court causing irreparable prejudice to a non-party to a suit or proceedings or adversely affecting his right, an error apparent on the face of the record may be held to exist since such decree or order is against the basic tenets of natural justice. The Court may entertain a petition and grant relief in exercise of inherent powers in an appropriate case.

54. The decision in Bharat Singh (supra) has been noticed in the decision of the Division Bench of this Court in Uma Addhya v. Biren Mondal and others, 2006(2) CHN 680 It has been held that the principle laid down in that decision would have no application to testamentary jurisdiction.

55. It would be worthwhile at this stage to consider the decision in Ram Chandra Singh Vs. Savitri Devi and Others, . There, a review of a consent order passed by the High Court was sought for by a stranger to the proceedings, being an auction purchaser of certain mortgaged property. A learned Judge of the High Court dismissed the petition. The Apex Court held that fraud vitiates all solemn acts and an order obtained by a party by practicing fraud on Court is non-est in the eye of law. So far as rejection of the review petition by the High Court is concerned, it was observed as follows:

"34. So far as the order dated 10-5-1999 passed in Civil Review No. 245 of 1998 is concerned, suffice it to say that the High Court should have considered the question as to whether the right of the auction purchaser could have been set at naught by reason of a consent order passed in his absence. The appellant was not a party in the first appeal. He was also not a party to the compromise.

35. The consent order, as is well known, is an agreement between the parties with the seal of the Court superadded to it. The appellant herein in the review

application categorically stated that the parties to the appeal had suppressed the auction-sale as also the confirmation thereof. The effect of the events appearing subsequent to the filing of the first appeal resulting in creation of a third party right was bound to be taken into consideration by the High Court. A third party right cannot be set at naught by consent. The High Court, therefore, was required to consider the contention of the appellant in its proper perspective. The High Court, in our opinion, was obligated to address itself on these questions for the purpose of reviewing its order."

The impugned judgment was not sustained and the High Court was directed to consider the matter afresh.

56. Although there is no declaration of law in absolute terms, I wonder whether the above observations would have at all been made by the Apex Court had a stranger to the proceedings no right to seek a review of an order passed in his absence but to his serious detriment.

57. That a review petition could be filed even by a person who is not a party to the original proceedings finds support from the observations made in the decisions in *National Cooperative Society (supra)*, *Ram Janam Singh (supra)*, *K. Ajit Babu (supra)* cited by Mr. Kar and even *Saurabh Chaudhri (supra)* cited by Mr. Bandopadhyay. There, the term "ordinarily" has been used which is significant.

58. But this finding that a stranger to the proceedings is entitled to seek review does not advance Mr. Kar's contention that instead of filing a writ petition, Naskar ought to have approached Hon"ble Dutt, J. in review jurisdiction.

59. Even though Naskar could have invoked review jurisdiction of Hon"ble Dutt, J., I find no reason to conclude that the course of action taken by Naskar is impermissible. Naskar had approached the writ Court with the prayer that the respondents in her writ petition ought to be directed to give effect to the decision reached at the highest level of the Government leading to according of administrative approval for shifting of the ADSR office to Fatehpur. A mandatory order was passed by Hon"ble Pal, J. on 14.9.2007 granting the respondents time till 30.11.2007 to shift the ADSR office from Falta to Fetepur. In her writ petition, Mallick was not a party since he was nowhere in the picture and even if he had been so, it has not been shown that it was within the knowledge of Naskar. More importantly, the Government had at the highest level accorded administrative approval in favour of shifting of the ADSR office to the accommodation offered by Naskar and, therefore, no relief had been claimed against Mallick.

60. I have looked into Mallick's petition, filed on 29.11.2007, for ascertaining his cause of action to move the Court of Writ. He alleged that on the one hand the respondents in his petition requested him to raise construction for accommodating the ADSR office but on the other hand, clandestinely, they decided to shift such office at Fatehpur. Reference of the Memo No. by which administrative approval for shifting of the ADSR office from Falta to Fatehpur was

accorded finds mention in the writ petition. It is difficult to assume that Mallick was only aware of the Memo No. and not the contents thereof. For sure, entire background facts were not disclosed. On his writ petition, Hon''ble Dutt, J. passed the following order:

Heard the learned advocates for the parties. The grievance of the petitioner is that the petitioner made a construction of a certain house property in terms of the discussion with some of the Government officials for the purpose of housing the Registration Office at Falta. The learned advocate for the petitioner submits that such house property has been constructed. Now, it appears that the respondent authorities are intending to shift the Registration Office to Fatepur and if the said Registration Office is shifted to Fatepur, the petitioner will be prejudiced and will suffer serious losses. The petitioner's learned advocate submits that the writ petition may be disposed of by directing the Secretary, Finance Department, Government of West Bengal, to consider the petitioner's case and dispose of the matter in accordance with law within a stipulated time. The learned advocate for the respondents authorities submits that respondents have no objection if the petitioner is allowed to make an appropriate representation to the said Secretary, Finance Department, Government of West Bengal and such representation is considered and decided by the said authority within a specified period. Considering the submissions made by the learned advocates for the respective parties, the writ petition is disposed of by giving liberty to the petitioner to make an appropriate representation to the Finance Secretary, Government of West Bengal within a week indicating the petitioner's grievances and the petitioner's case and if such representation is made within the stipulated time, the Secretary, Finance Department, Government of West Bengal shall consider the case of the petitioner and dispose of the petitioner's representation by giving an opportunity of hearing to the petitioner within four weeks from the date of making of the representation by the petitioner in accordance with law and shall communicate his decision to the petitioner immediately after the disposal of the petitioner's representation. Till the decision of the Finance Secretary, Government of West Bengal that may be taken on the petitioner's representation, the respondent authorities are restrained from shifting the Registration Office to Fatepur from the present place.

61. It is, therefore, clear that while Hon''ble Pal, J. directed shifting of the ADSR office to Fatepur by 30.11.2007, Hon''ble Dutt, J. by the order dated 30.11.2007 restrained the respondents from shifting the office to Fatepur till a decision is taken by the Principal Secretary, Finance Department on the representation to be filed by Mallick. The writ petition was filed on 29.11.2007, and moved and disposed of on the following day. It is quite but natural that the learned Advocate for the State did not have necessary instructions. Obviously, Hon''ble Dutt, J. had not been apprised of the administrative approval dated 13.11.2006 and the mandatory order passed by Hon''ble Pal, J. on 14.9.2007. On the contrary, learned Advocate for the State conceded that Mallick may be allowed to file a representation. He did not even oppose the order of injunction being passed.

This Court is certain that if the antecedent facts had indeed been placed before the Court on 30.11.2007 in course of hearing of Mallick's writ petition, the outcome of the writ petition would have been otherwise for no Court consciously passes an order in direct conflict with an earlier order passed by the Court exercising the same jurisdiction.

62. Facts of the present case appear to be unusually similar to the one considered by the Constitution Bench of the Apex Court in Shivdeo Singh (supra). There, certain agricultural lands were allotted to a number of displaced persons including the appellants on a quasi permanent basis under the administration of Evacuee Property Act, 1950 and Rules made thereunder in a particular village. It was an admitted fact that the appellants fell under the category of "non-faujis". On 9.10.1951, the Director of Relief and Rehabilitation, Punjab, made an order adverse to the interest of the appellants Shivdeo Singh & Ors. To maintain the character of the said village as "fauji", he directed that the appellants have to move out for being accommodated in some other village.

63. Soon after this order was made, the appellants preferred a writ petition before the High Court of Punjab for quashing the order. The Director of Rehabilitation alone was made a party thereto. The petition was allowed by Hon"ble Khosla, J. (as His Lordship then was). Eventually the respondents 3 to 14 in the appeal before the Apex Court, who were members of "fauji" families and in whose favour either allotment had been made or was intended to be made, preferred a petition before the High Court under Article 226 of the Constitution for impleading them as parties in the appellants' petition and re-hearing the whole matter. The petition was entertained by the High Court and Hon"ble Khosla, J. allowed it. The appellants preferred a Letters Patent appeal before the High Court which having been dismissed, the Apex Court was approached in appeal by special leave. The law on the point was declared in the following terms:

8. The other contention of Mr Gopal Singh pertains to the second order of Khosla, J., which, in effect, reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a 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. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests

were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J.

64. The law declared in the decision, without an iota of doubt, has total application in the present case. The view has been echoed in *Pohla Singh* (supra). They have the effect of putting a quietus to the argument advanced by Mr. Kar. A second writ petition for review of an earlier order would thus be very much maintainable.

65. The further contention raised by Mr. Kar that in *Shivdeo Singh* (supra) the former and the latter petitions were considered by the selfsame learned Judge and, therefore, assuming that the Court has the power to review its earlier order and hence this petition ought to have been moved before Hon''ble Dutt, J. is not considered to be of any substance.

66. The Hon''ble Chief Justice is the master of the roster. As per the roster prepared by His Lordship, I had the determination to entertain writ petitions falling under Group IX of the Classification List at the admission stage and no other Court was given concurrent determination; hence, Naskar could not have urged that her writ petition should be heard by Hon''ble Dutt, J.

67. It is true that while the writ petition came up for final hearing before me, Hon''ble Dutt, J. had the determination to hear writ petitions, finally irrespective of classification of cases. The point that the writ petition should not be heard by me and liberty ought to be granted to Naskar to have this petition considered finally by Hon''ble Dutt, J. was not raised by Mr. Kar at the very beginning but such point was taken only after Mr. Bandopadhyay had cited the decisions in *Shivdeo Singh* (supra) and *Pohla Singh* (supra) in support of maintainability of the petition and had concluded his argument on merits of the petition, and I had enquired from Mr. Kar by raising pointed questions as to how the Principal Secretary, Finance Department despite noticing the order passed by Hon''ble Pal, J. could proceed to pass an order without putting Naskar on notice and whether such an action was demonstrative of his irresponsible, unfair, biased and arbitrary conduct or not. Mr. Bandopadhyay is justified in contending that the respondents not having raised the plea of granting Naskar the liberty of having the petition finally heard by Hon''ble Dutt, J. prior to his address on the merits of Naskar's claim, submission of Mr. Kar that Naskar should be granted liberty to move Hon''ble Dutt, J. for hearing this petition ought not to be accepted. If such plea is allowed, the Court would be encouraging bench-hunting tactics apart from becoming a party to wastage of precious judicial time.

68. It would be appropriate at this stage to note as to whether Courts in India possess inherent power or not. A passage from the decision in *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, is worth quoting. It reads:

"22. *****Inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or Courts themselves so as

to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order."

69. In a case where an order is passed by a Court in judicial proceedings in violation of natural justice either because entire facts have not been stated before the Court or the Court has been misled or that the Court has committed an error, it should be the duty of the Court to correct itself in exercise of its inherent power and technicalities ought not to be allowed to transcend justice.

70. I have not found in Shivdeo Singh (supra) a law laid down by the Apex Court that the former and the latter petitions are required to be heard by the self-same Judge who decides the former one. In Pohla Singh (supra), a learned Judge who had not passed order on the former petition passed order on the latter petition. Since it is settled law that power of review inheres in every Court of plenary jurisdiction and that a Court of writ exercises power of review not under Order 47, CPC but in exercise of its inherent jurisdiction and in the interest of justice [see Pintu Acharyya v. State of West Bengal & Ors., reported in 1997 (2) CLJ 428], I do not consider that by deciding the issues raised in the present petition I would transgress my authority. In terms of the determination fixed by the Hon'ble the Chief Justice, I do have the authority to hear and decide the present petition and even to interfere for preventing miscarriage of justice and to correct an error committed by the writ Court resulting from non-disclosure of full facts.

71. Rule 5 of Order 47, CPC requiring a review petition to be heard by that Judge who passed the order under review, if available, is a procedural provision. Procedural law, it is well-known, is the handmaid of justice. It has to bend before justice. When a Writ Court has plenary powers to review an order passed in writ jurisdiction affecting substantive rights of parties, the procedure laid down in Rule 5 would not stand in the way. That in the case of Shivdeo Singh (supra) Hon'ble Khosla, J. of the High Court had the occasion to deal with both the former and the latter petitions is, thus, absolutely immaterial.

72. The decision in Vidya Devi (supra) though holds that as far as can be made applicable, provisions of CPC would apply in principle to proceedings for review in connection with writ proceedings in view of Rule 53 of the Writ Rules framed by the Court, I am inclined to hold on the basis of the decisions in Shivdeo Singh (supra) and Pintu Acharyya (supra) that a writ Court, in a given case, would be justified in reviewing an order passed by a coordinate Bench having regard to its

plenary powers for ends of justice and to prevent abuse of the process of law as well as the Court.

73. The decision in *Smt. Swapna Majumdar v. State of West Bengal & Ors.*, reported in 1999 Lab IC 2862 is one directly on the point. The petitioner's husband died in harness. The elder brother of her deceased husband filed a writ petition for direction upon the respondents to appoint him on compassionate ground, whereupon an order was passed by a learned Judge of this Court. Coming to learn of such order, the petitioner filed a writ petition which was allowed by Hon''ble Satyabrata Sinha, J. (as His Lordship then was) by holding as follows:

3. A question arises as to whether despite an order passed by the learned Judge of this Court, the same can be reviewed by another Judge at the instance of a third party. It is now a well settled principle of law that if an order has been obtained by playing fraud upon Court, the same will be a nullity and even principle of natural justice is not required to be complied with. Even in such a case, it is open to this Court to review its earlier order suo motu or an application filed by a third party who is affected thereby. Reference in this connection may be made to *Shivdeo Singh and Others Vs. State of Punjab and Others*, . The Apex Court has clearly held that when a fraud has been committed on Court even by suppression of a relevant fact or a document, compliance of principle of natural justice is not necessary nor principle of estoppel shall apply therein. Reference in this connection may be made to *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, , *State of Tamil Nadu and others Vs. A. Gurusamy*, and *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*,

74. Ultimately it was directed the claim of the petitioner for grant of appointment on compassionate ground be considered in terms of the rules prevailing at the relevant time when the vacancy was declared and if the elder brother of the petitioner's husband had been appointed in the meantime, his appointment shall be cancelled.

Consideration of the present petition by me, thus, is not barred by law.

75. That apart, the plea that acceptance of Mr. Kar's submission would result in multiplicity of proceedings is also of substance. A review petition before Hon''ble Dutt, J. and a second writ petition before the Court of Writ are the possible remedies that Naskar had before her. On the authority of *Dhannalal (supra)*, choice is with Naskar to choose her forum that is most suitable to try her claims. The present petition has ensured that the causes of action are not split up to be tried by different fora. To maintain uniformity of decision, the present petition for review of the order dated 30.11.2007 is well-nigh maintainable before me.

76. On facts, it is found that because of the order dated 30.11.2007 not only the order dated 14.9.2007 has not been complied with, the Principal Secretary, Finance Department has sought to nullify the order dated 14.9.2007 by passing

the order dated 26.12.2007. I would consider it to be misrepresentation on the part of the parties before Hon"ble Dutt, J. in not disclosing full facts and an unintentional mistake on the part of the Court in passing the order dated 30.11.2007 whereby a settled position was unsettled without hearing Naskar in whose favour a right had crystallised by virtue of the order dated 14.9.2007.

77. I, therefore, find no legal impediment in reviewing the order dated 30.11.2007 passed by Hon"ble Dutt, J. On such review, I recall the order dated 30.11.2007 passed on Mallick's writ petition and direct that it shall be restored to its original file and number. Office is directed to implead Naskar as an additional respondent therein. Cause title of that writ petition shall be amended within ten days from date and a copy thereof served on Naskar's advocate-on-record immediately thereafter.

78. Contentions urged by the official respondents regarding selection of an appropriate site for accommodating the ADSR office, howsoever meritorious, cannot prevail in view of non-grant of opportunity of hearing to Naskar. At the same time, it is appreciated that Naskar's earlier petition was disposed of on the same day it was moved without inviting affidavit from the official respondents since no such prayer appears to have been made. Regard being had to such state of affairs, and without expressing any opinion on the merits of the rival claims the sites proposed, I grant liberty to the parties (including the official respondents) to pursue their respective remedies in accordance with law.

79. In the circumstances, however, this writ petition stands allowed. Parties are left to bear their own costs.

Urgent Photostat certified copy of this judgment and order shall be furnished to the applicant as early as possible but positively within four days from putting in requisites therefore.