

(2005) 07 DEL CK 0001

In the Delhi High Court

Case No : CM No's. 600 and 7591 of 2004 and RA No. 242 of 2004 in Writ
Petition (C) No. 672 of 2004

Smt. Sarla Devi Jain

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 151
Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 17(3A), 4, 6
Limitation Act, 1963 — Article 124, 5

Citation : AIR 2006 Delhi 12 : (2005) 121 DLT 426 : (2005) 83 DRJ 377

Hon'ble Judges : Swatanter Kumar, J;A.K. Sikri, J

Bench : Division Bench

Advocate : M.L. Lahoty and Paban K. Sharma, for the Appellant; Sanjay Poddar and Sachin Nawani, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—Review Application No. 242/2004 is an application filed under Order 47 Rule 1 read with Section 151 of the CPC praying for review of the order dated 4th February, 2004 while C.M. No. 7591/2004 is an application u/s 5 of the Limitation Act praying for condensation of delay in filing the review application (R.A. No. 242/2004). C.M. No. 600/2004 is still another application filed u/s 151 of the CPC for staying of the operation of the judgment and directing the Respondents to maintain status quo. The Petitioner/applicants had filed a writ petition under Article 226-227 of the Constitution of India praying for quashing of the entire acquisition proceedings on the ground that the process of acquisition was vitiated as it was ex facie in violation of the statutory mandate of Section 17(3A) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") as the Collector had not offered or tendered 80% of the award before taking the possession. They also pray for grant of relief, in the alternative that Respondents be directed to ensure that alternative suitable site is allotted to the

Petitioners as by the process of acquisition they had been deprived of their livelihood. This writ petition was disposed of vide order dated 4th February, 2004 by a Division Bench of this Court. It was noticed in the order that the entire compensation has been paid to Smt. Sarla Devi Jain and Civil Writ No. 672 and 705-715/2004 were the writ petitions where the matters in relation thereto were pending adjudication before the Court. In relation to 80% of the estimated compensation, which has allegedly been paid, being too low, the Court granted liberty to the Petitioners to take steps in accordance with law. In regard to the alternative prayer, the Court directed as under:-

"Learned counsel for the petitioners further submits that though the possession of the subject property was taken on 23rd December, 2003 but no alternative plot in terms of guidelines on Relocation and Rehabilitation Policy, circulated on 31st January, 2002, has been allotted. On this, Mr. Poddar, learned counsel for the LAC submits that since a large number of cases have to be processed in terms of the said policy, the entire exercise is likely to take some time. It is also pointed out that the petitioners have not so far made any representation in this behalf.

Having regard to the rival stands, we direct that on petitioners making an application for allotment of alternative plots in terms of the aforementioned policy, the LAC concerned shall take a final decision thereon as expeditiously as practicable and in any case not later than four months from the date of the receipt of the representations.

The writ petitions and applications for interim relief stand disposed of in the above terms."

2. Review of this judgment of the Court is sought on the ground that the Petitioner had raised a pertinent question as to the validity and legality of the acquisition proceedings and even subsequent demolition of the property in question, without adherence to the statutory provisions of the Act. It was alleged that Section 6 declaration had not been issued, still the property of the Petitioners had been demolished. It is averred that notification u/s 4 of the Act issued on 9th October, 2003 followed by a corrigendum of 12th November, 2004. Declaration u/s 6 was published on 26th December, 2003 and the Land Acquisition Collector had directed possession of the property to be taken vide order dated 27th December, 2003 but the Petitioners were dispossessed and the property demolished on 23rd December, 2003 itself. The Petitioner claim to have filed another writ petition being W.P.(C) No. 8197/2004 which was dismissed by another Division Bench of this Court, while granting the relief to the Petitioner to file a review petition/application, and that the Petitioner had filed the present review petition in which the emphasis is placed upon the irregularities committed by the Respondents as well as that the policy dated 31st January, 2002 framed by the Government of NCT of Delhi is not being adhered to rehabilitate the Petitioner.

3. After notice, reply to the application was filed wherein it was stated that Petitioner has not made out any case and in fact the application is not even maintainable in law. It is stated that 80% of the estimated compensation has already been paid to the Petitioner for the land measuring about 226 sq. mtrs. on 20th January, 2004 which has been received by the Petitioner. On the one hand, the Petitioner, by filing and pursuing contempt petition No. 514/2004 is praying for compliance of the judgment of the Court dated 4th February, 2004 while on the other hand he wants review of the same order and as such the Petitioner cannot be permitted to approbate and reprobate at the same time. There is no delay in publishing the declaration u/s 6 and in any case in view of the settled principles of law, it is inconsequential, as the possession has already been taken over and utilised for the public purpose in accordance with the provisions of law. The contents of the review application and the arguments addressed before us by the learned Counsel appearing for the Petitioner clearly indicate that Petitioner is actually wanting the rehearing of the matter on merits. The order dated 4th February, 2004 was admittedly not questioned by the Petitioner before the Appellate Court. The intent of the application is to press before the Court rehearing of the matter on the grounds taken up in the writ petition and even the ground which have not been taken in the writ petition. It is an admitted case that possession of the land has already been taken and 80% of the estimated compensation already paid to the petitioners. The legal niceties now sought to be raised by filing the present review petition in any case cannot alter the factual matrix of the case as of today. Notification u/s 4 of the Act was issued, declaration u/s 6 was published and thereafter the possession of the property has been taken. The declaration was issued on a prior date and if it was published a day later, it would not prove fatal to the acquisition proceedings. The argument that the grounds taken up in the writ petition have not been correctly decided by the Court is no ground for seeking review of the judgment.

4. Reference in this regard can be made to a recent judgment of this Court in the case of Anil Kumar Jain and Anr. v. Union of India, in CM No. 4274 in WP(C) No. 1246/1990 decided on 5th May, 2005 where the Court held as under:-

"The scope of the review jurisdiction of the Court is a very limited one. The applicant cannot pray for review of a judgment merely because some of the judgments have not been noticed by the Court particularly when the judgments were not even referred to before the Court at that stage and in any case the applicant will be in no position to say so. Furthermore, the jurisdiction of review does not extend for substituting a view taken by the Court on merits or otherwise of the contentions raised before the Court on the facts and circumstances of a case. The applicant is essentially praying before the Court that the view taken by the Court on different facets of the case - legal and factual - should be substituted primarily because another view was possible. The power to review normally is the creation of a statute. However, in exercise of powers by the High Court under Article 226 of the Constitution of India, the Court can take recourse to the power of review by necessary implication. Such

power of review has a limited scope and is normally used for the correction of a mistake but not to substitute a view in law. Such mistake or error contemplated under this rule must be such which is apparent on the face of the record and not a correction of an error which requires long drawn process of reasoning. The limitation on the powers of the Court under Order 47 Rule 1 are similar and applicable to the jurisdiction available to the High Court under Article 226 of the Constitution of India. With caution the Court has to ensure that such power is not exercised like entertaining an "Appeal in disguise". Where conceivably there may be two opinions and an error has to be established by a long drawn process it is not an error apparent on the face of the record. Reference in this regard can be made to the judgment in the case of R.S. Rajanna v. Sri Basavaiah and Ors. AIR 1997 Kar 245 and in the case of Prem Dutt v. Punjab State 1998 1 PLR 444.

8. In the case of Parsion Devi and Others Vs. Sumitri Devi and Others, the Supreme Court has held as under :-

"It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC.

Under Order 47 Rule 1 CPC a judgment may be open to review inter alias if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

9. An error which is not self evident and has to be dictated by a process of reasoning can hardly be said to be an error apparent on the face of the record.

10. This principle was reiterated by the Supreme Court in the case of Lily Thomas, etc. etc. v. Union of India and Ors. JT 2000 5 SCC 617 further with a clear caution that in exercise of power of review the Court may correct the mistake but not to substitute the view. The mere possibility of two views on the subject, is not a ground for review."

5. Besides that this application is beyond the purview of provisions of Order 47 Rule 1 of the CPC, it must be noticed that the present application is also barred by time. The order was pronounced on 4th February, 2004 and in terms of Article 124 of the Limitation Act, 1963 the application for review should be filed within 30 days from the date of the decree or order, review of which is sought.

6. The review application in this writ petition was filed in the Registry of this Court on 6th July, 2004 at filing number 20223. In the application for condensation of delay, no facts have been stated. All that has been averred is that petition could not be filed on 5th June, 2004 because of illness of the Court Clerk. No dates have been given and there is no Explanation, much less a

reasonable cause shown for condensation of delay in filing of the application. The application runs into 2 paragraphs of about 8 lines. The application is patently barred by time in which no cogent reasons have been stated for condoning the delay. The grounds taken in the review application are without any merits. An attempt is now being made to somehow have rehearing of the case. The grounds taken are beyond the purview and scope of provisions of Order 47. We are unable to see any merit in the application which will persuade to hold that there is any patent error of law in the judgment under review, or that there are any additional grounds now pleaded in the review application which would justify recourse to such remedy. We may also notice here that while dismissing the writ petitions filed by the Petitioner, subsequently the Division Bench vide its order dated 21st May, 2004 had clearly stated that the substantive writ petition was not maintainable in face of the order dated 4th February, 2004 and also that with regard to the request for allotment of alternative plot the Petitioner had already received a letter from the Land Acquisition Collector. The Counsel then had prayed for leave to withdraw the writ petition with liberty to take recourse to appropriate remedy in accordance with law. The Petitioner obviously cannot take advantage of that order. While, we find no merit in this Review Application on the afore-noticed grounds, we would still issue a direction to the Respondents to comply with the directions issued by the Division Bench in its order dated 4th February, 2004 in relation to the decision of the application of the Petitioner for allotment of alternative plots in terms of the policy of the administration. Once a direction was issued by the Division Bench, it was expected of the Respondents to act in terms of the judgment expeditiously. Period of more than 5 months have passed, but the Respondents have taken no steps except writing a letter to the Petitioner. In these circumstances, we direct the concerned respondents to ensure compliance of the order of the Division Bench, failing which they would be liable to be proceeded against in accordance with law. An appropriate order should be passed by the Respondents in terms of the Division Bench judgment, expeditiously and without fail.

7. For the reasons aforestated, all the three applications filed by the Petitioner are dismissed.