

(2004) 01 OHC CK 0024

In the Orissa High Court

Case No : Review Petition No. 134 of 2003

Sri Jadunath Jena

APPELLANT

Vs

Basupur Gram Panchayat and Others

RESPONDENT

Date of Decision : 09-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : AIR 2004 Ori 81 : (2004) 97 CLT 334

Hon'ble Judges : Sujit Barman Roy, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : B.H. Mohanty, B. Das, R.K. Nayak, S.C. Mohanty, S. Burma, K.P. Parija and D.P. Mohanty, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

A. S. Naidu, J.—This Review petition has been filed with a prayer to review the common judgment dated 15.11.2003 passed in W.P.(C) Nos. 6442 & 1391 of 2002.

2. W.P.(C) No. 6442 of 2002 was a Public Interest Litigation filed by Basupur Gram Panchayat, represented through its Sarpanch seeking issuance of a direction to opposite parties to lease out the sand sairat of Luna river adjacent to village Basupur in the district of Kendrapara measuring Ac, 63.64 dec. appertaining to Plot No. 1099 of Khata No. 439 in favour of the Grama Panchayat.

Similarly, W.P. (C) No. 1391 of 2002 was filed by a villager with almost identical prayer but with a variation that the said sairat should be put to auction and leased out in favour of the highest bidder.

3. The allegations made in both the writ applications reveal that the authorities are leasing, out the aforesaid sand sairat in favour of the present petitioner, who was opposite party No. 5 in both the writ petitions for a paltry sum of Rs. 1,861/- only. But if the said sairat, which is a property of the Government is put to auction it will fetch atleast 30-40 thousand rupees or even more. The claim of

the petitioners in both the writ petitions was countenanced by the present petitioner on the ground that on the basis of a compromise decree passed in Title Suit No. 359 of 1986 the State has been restrained from putting into auction the aforesaid sand sairat. The compromise decree according to the present petitioner stipulates that the sairat should be settled only in favour of the petitioner year after year by enhancing 10% of the premium.

4. The said compromise as it appears was entered between the present petitioner and the Tahasildar in the suit filed by the petitioner (T.S. No. 359 of 1986). According to the writ petitioners, the Tahasildar had no authority or jurisdiction to enter into the compromise in a suit and the decree itself is a nullity in the eye of law.

5. After hearing the learned counsel for all the parties in extenso, this Court without entertaining into the controversy as to whether the compromise decree is valid or not disposed of the writ petitions holding that the right of the present petitioner (opposite party No. 5 in the writ petitions) shall be confined to only Ac. 0.92 dec. which was the suit schedule land till the compromise decree passed in the civil suit is varied by any higher Court. It was also held that he cannot claim any right over any other land except the suit schedule land and it would be open for the authorities to lease out the rest of the lands appertaining to Plot No. 1099 of Khata No. 439 of village Basupur by conducting annual auction as stipulated under the Tahasil Manual if the same, still continues to be Government land. Liberty was given to opposite party No. 5 (petitioner in the present review petition) to work out his remedies, if he had acquired any right in respect of any area other than Ac. 0.92 dec. out of Plot No. 1099 before the competent authority.

6. Mr. Mohanty, learned counsel appearing for the petitioner in this Civil Review, inter alia, submitted that this Court committed error in confining the compromise decree only to Ac. 0.92 dec, and such finding was arrived at ignoring the prayer made in the suit. It is also submitted that this Court lost sight of the fact that the defendants were permanently restrained from putting into auction of Basupur Luna river sand sairat and causing any damage to the adjoining land of the plaintiffs. In course of hearing Mr. Mohanty forcefully submitted that as certain inadvertent error has crept in the order, the same should be rectified.

7. The Supreme Court in the case of S. Nagaraj and Others Vs. State of Karnataka and Another, observed as follows :

"Justice is a virtue which transcends all barriers. Neither the rules of procures not technicalities of law can stand in its wayEven the law bends before justiceIf the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right...."

In the said decision, the following principles to review an order were formulated :

(1) If the judgment is vitiated by an error apparent on the face of the record in

the sense that it is evident on a mere looking at the record without any long drawn process of reasoning, a review application is maintainable.

(2) If there is a serious irregularity in the proceeding, such as violation of the principles of natural justice, a review application can be entertained.

(3) If a mistake is committed by an erroneous assumption of a fact which if allowed to stand would cause miscarriage of justice, then also an application for review can be entertained.

8. In this case while deciding the two writ petitions, all pros and cons of the case were lucidly considered by this Court and keeping in view the stipulations made in the compromise decree vis-a-vis the contentions of either parties and the fact that Ac 63.64 dec. of sand sairat is settled for a paltry sum of Rs. 1,861/-and the fact that the suit schedule land was confined to only Ac. 0.92 dec., disposed of the case with a reasoned order. All the questions raised by the learned counsel appearing for the review petitioner have been argued and dealt with in detail in our judgment. Considering the matter in the touchstone of the ratio of the decision of the Supreme Court in the case of S. Nagaraj (supra), we feel that the present review petition has absolutely no merit and the same deserves no consideration.

9. In the circumstances, the review petition is dismissed. Parties to bear their own costs.