
(1991) 09 GUJ CK 0004
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Diwaliben Radhav Khant and Others

RESPONDENT

Date of Decision : 09-09-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 9, 115, 115

Citation : (1992) 1 GLR 108

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Judgement

B.J. Shethna, J.—All these Civil Revision Applications are disposed of by this common judgment as the question involved in all these Revision Applications is the same. State of Gujarat has preferred these Revision Applications against the impugned common order dt. 2-8-1989 passed by the learned Extra Assistant Judge, Rajkot District at Gondal passed below Exh. 1 in Civil Misc. Applns. Nos. 104 of 1988 to 108 of 1988, 21 of 1989 to 33 of 1989, 35 of 1985, 52 of 1989 to 55 of 1989. The learned Extra Asstt. Judge allowed all applications and modified the earlier judgment passed by his predecessor in his office in Review Application to the effect that the respondent claimants in each applications be awarded additional amount at the rate of 12% of the market value of the land per annum for the entire period beginning from the issuance of preliminary notification upto the award of the Collector or the taking of the possession of the land whichever is earlier.

2. Mr. K.C. Shah, learned A.G.R appearing for the State has contended before me that once the review applications have been granted earlier by the learned Extra Assistant Judge by his impugned common order dated 15-3-1988, the second review application to modify the said order passed in review application, is barred by the provisions of Order 47 Rule 9 C.P.C. He has further submitted that the claimants may have many other remedies to challenge the earlier order passed by the learned Assistant Judge before appropriate forum. But second review application to review the earlier order passed in review application is not

permissible under the law.

3. He has further submitted that by the earlier order dt. 15-3-1988, two prayers prayed for in the review application, have been granted, but the 3rd prayer, which is prayed for in the present application was not granted. That amounts to refusing to grant the prayer. Therefore, that order ought to have been challenged by way of any other remedy but not by way of filing review application before the same Court.

4. For considering the aforesaid contentions raised by Mr. Shah, few facts are required to be stated.

In Land References which were decided on 14-2-1983 by the learned Assistant Judge review applications were filed u/s 114 C.P.C. and under Order 47 Rule 1 C.P.C. In the said review applications, a prayer was made to review the earlier order on account of the amendment in Section 23(1)(A) of the Land Acquisition (Amendment) Act, 1984 giving retrospective effect. Before the learned Assistant Judge 3 prayers were made in the review applications by each claimant in all the Land Reference Cases, viz., (1) to pay solatium at the rate of 30% of the market value instead of 15%, (2) interest at the rate of 9% per annum from the date of taking possession till expiry of the period of one year and thereafter interest at the rate of 15% per annum till its realisation and (3) the claimant may be awarded additional amount at the rate of 12 per cent of the market value of the land per annum for the entire period beginning from the date of issue of preliminary notification upto the award of the Collector or the taking of possession of the land whichever is earlier.

From the impugned order dt. 15-3-1988 which is annexed with these revision applications, it is clear that the learned Assistant Judge, Gondal was in full agreement with the contentions raised in the review applications and he was of the view that the prayers made in the review applications were required to be granted. For the same the learned Asstt. Judge has relied upon several judgments of different High Courts, Supreme Court and also of the Federal Court and allowed the review applications and accordingly, modified the award in Land Acquisition Cases and corrected to the effect that the claimant be awarded solatium at the rate of 30% of the market value instead of 15% and interest at the rate of 9% per annum from the taking of the possession till expiry of one year and thereafter interest at the rate of 15 per cent per annum till its realisation.

However, appears that though the Assistant Judge was of the opinion that the prayers made in the review application are required to be granted, still it appears from the judgment that the third prayer, viz., that the claimant may be awarded additional amount at the rate of 12 per cent of the market value of the land per annum for the entire period beginning from the issue of preliminary notification upto the award of the Collector or the taking of the possession of the land whichever is earlier, which was required to be granted by the learned Judge

himself, was not mentioned in the impugned order while granting the review applications.

5. In view of the obvious omission made by the learned Judge, when the claimants came to know about the aforesaid order passed by the learned Judge, by which through oversight, the third and last prayer regarding awarding additional amount at the rate of 12 per cent of the market value of the land per annum for the entire period beginning from the issue of preliminary notification upto the award of the Collector or taking of the possession of the land whichever is earlier was not granted. Therefore, on 7-5-1988 the claimants in each Land Reference Case filed an application under Sections 151 and 152 C.P.C. to correct the said mistake in the order passed by the learned Assistant Judge granting review applications.

6. The learned Assistant Judge allowed all the applications by his impugned common order dated 2-8-1989 in which he has held that "If we go through all the Review Petitions, then we find that all the applicants have claimed additional amount of interest u/s 23(1)(a) of the Amended Land Acquisition Act, 1984. If we go through the judgment passed by my learned Predecessor all Review Applications, then, we find that through oversight by my learned Predecessor has not granted additional amount of interest u/s 23(1)(a) of the Land Acquisition Act." In view of the above finding, the learned Assistant Judge further held that "In these circumstances, it is crystal clear from the record that there is omission on the part of my learned Predecessor for not granting additional amount of interest. Hence, I hold that all the applications are deserves to be allowed u/s 152 of the C.P.C."

7. Now from the above fact, it is clear that subsequent applications were not filed by the claimants before the learned Assistant Judge under Order 47, Rule 9 C.P.C. Said applications were filed under the provisions of Sections 151 and 152 C.P.C. Therefore, the first contention raised by Mr. Shah that second review application to review the order passed in the first review application is barred under the provisions of Order 47 Rule 9 C.P.C. cannot be accepted. However, Mr. Shah contended that it is nothing but an application under Order 47, Rule 9 C.P.C. Simply quoting Sections 151 and 152 C.P.C. will not change the real nature of the application. However, even assuming for the sake of argument that the applications could have been made under Order 47, Rule 9 C.P.C. but in that case this objection was not raised by the petitioner before the Assistant Judge and therefore, in the facts and circumstances, I would not permit Mr. Shah to raise this contention. Because, ultimately substantial justice is required to be done and if the Civil Court had committed any mistake through oversight in not granting the relief, that itself would not be a ground for the State Government to come before this Court by way of these Revision Applications. Because, even if the second review application was not maintainable before the learned Asstt. Judge then in that case, the original applicant would have challenged the impugned order passed in Review Application before this Court in review

application and this Court would have immediately granted that relief. Therefore, whether the relief is granted by the Lower Court, which could have been granted by this Court would not make any difference.

8. Mr. Shah further contended that the impugned order cannot be passed u/s 152 C.P.C. because it can be raised only if there is a clerical or arithmetical error, which is none in this case. However, Mr. Shah overlooked the provision of Section 152 C.P.C. itself which clearly says that from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. In the case of Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, the Supreme Court has clearly observed as under:

...The accidental slip or omission is an accidental slip or omission made by the Court. The obvious instance is a slip or omission to embody in the order something which the Court in fact ordered to be done. This is sometimes described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge's inadvertence or the advocate's mistake....

9. In the instant case it appears that there was an omission made by the learned Assistant Judge while allowing the first review application inadvertantly by not granting the third relief which is subsequently granted by the impugned order by his successor in his office. Thus, when the learned Assistant Judge who has in terms found that, through oversight his learned predecessor, has not granted the relief, therefore, he has to grant that relief. And, accordingly, he has granted the relief. Therefore, under the above circumstances, this Court would not interfere in its revisional jurisdiction in a petition which is filed u/s 115 of C.P.C. In view of the above discussion, I do not see any merit in any of the contentions raised by Mr. Shah. Therefore, these Revision Applications fail and are dismissed.