

(2018) 04 GAU CK 0137

In the Gauhati High Court

Case No : Revision Petition No. 2 of 2018

Z. Zohmingthanga @APPELLANT@Hash State of Mizoram

Date of Decision : 11-04-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 47 Rule 1

Citation : (2018) 04 GAU CK 0137

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

N. Sailo,J.

This Review Petition has been filed by the petitioners seeking review of the Judgment & Order dated 10.07.2017, passed in WP(C) No. 123/2016.

1. Mr. Lalfakawma, the learned counsel for the review petitioners at the outset has drawnly attention of this Court to Para 11 in the Judgment &

Order dated 10.07.2017. Paragraph 11 may be quoted as below:-

â??11. In the result, the writ petition is disposed with a direction to the State respondents to take a decision as to whether the land acquisition

proceedings should be initiated and completed in terms of the Land Acquisition Act, 1894 or by the Mizoram (Land Acquisition, Rehabilitation &

Resettlement) Act, 2016 and its Amendment within a period of 1 (one) month from the date of receipt of a certified copy of this Order. The

respondent No. 2 i.e., the Commissioner and Secretary to the Government of Mizoram shall cause necessary process to ensure that the decision is

taken by the State Government within a stipulated time as directed. Upon the decision being taken, the respondents shall proceed with the acquisition

proceedings and complete the entire exercise within a period of 5 (five) months.

It is also made clear that the State respondents would be at liberty to consider the case of other similarly situated land owners who are affected due to the construction and up-gradation of KDZKT Road. Liberty is also given to the State respondents to deduct the financial assistance already given to the petitioners and those similarly situated.â??

3. Mr. Lalfakawma, the learned counsel has also drawnly attention of this Court to common Judgment & Order dated 15.11.2017 passed in WP(C)

No. 20 & 30/2014, whereby this Court has held that (Mizoram Land Acquisition, Rehabilitation & Resettlement) Act, 2016 (Mizoram LA Act, 2016),

has been held to be not applicable in the State of Mizoram. Consequently, the Right to Fair Compensation & Transparency in Land Acquisition,

Rehabilitation & Resettlement Act, 2013 (Act of 2013) which repealed the Land Acquisition Act, 1894 was directed to be applied against the claim of

the petitioners therein. The learned counsel submits that this Court in WP(C) No. 123/2016 had directed the State respondents to take a decision as to

whether the acquisition proceedings upon the land of the petitioners should be carried out in terms of the Land Acquisition Act, 1894 or the Mizoram

LA Act, 2016 within a time frame, but however, since the Mizoram LA Act, 2016 was held to be not applicable in WP(C) Nos. 20 & 30/2014 and the

Land Acquisition Act of 1894 having been repealed by the Act of 2013, the Judgment & Order dated 10. 07.2017 passed in WP(C) No. 123/2016 may

be reviewed. The learned counsel further submits that the grounds taken in the Review Petition are good grounds for review and in fact, subsequent

development can also be taken into consideration by the Court in appropriate cases. In this connection, he relies upon the decision of the Apex Court

in Board of Control for Cricket in India & Anr., vs. Netaji Cricket Club & Ors., (2005) 4 SCC 741.

4. Ms. Mary L. Khiangte, the learned Government Advocate submits that Court may consider the Review Petition if the same is within the scope of

Order 47 Rule 1 as well as Section 151 of the Code of Civil Procedure, 1908. She also submits that if the Court is inclined to allow the Review

Petition, the respondent authorities may be given a reasonable time to comply with the directions passed in the judgment & order under Review.

5. I have considered the submissions of the learned counsels appearing for the rival parties and I have perused the materials available on record.

6. It is an established position in law that a review is not an appeal in disguise. In considering a Review Petition, Court cannot be called upon to re-hear the case afresh. The scope of review is limited and it is only when the conditions contemplated under Order 47 Rule 1 are satisfied that the Court would be inclined to review its Order. Order 47 Rule 1 of the CPC provides that an order can be reviewed upon discovery of new important matter or evidence which, after the exercise of due diligence was not within the knowledge or could not be produced by the party, seeking review when such order was passed or there was some mistake or error apparent on the face of the record, or for any other sufficient reason.
7. The Apex Court, in the case of Board of Control for Cricket in India and Another (Supra) has held that an application for review would be maintainable if there exist sufficient reason thereof and what would constituting sufficient reasons would depend on the facts and circumstances of the case. An application for review may also be necessitated by invoking the doctrine of *actus curiae neminem gravabit*, i.e., the order of the Court shall not prejudice or harm any party. The Apex Court further observed that the Court while exercising its review jurisdiction may in a given situation even take into consideration a subsequent event for the purpose of rectifying its own mistake.
8. Though there is no mistake committed in the present case, the law holding the field at the relevant time was the Mizoram LA Act, 2016, but having regard to the fact that the same has been rendered redundant subsequently, I am of the considered opinion that under the peculiar facts and circumstances a case for review is made out.
9. In the result, the State respondents within a period of 1 (one) month from the date of receipt of a certified copy of this order initiate the acquisition proceedings, as per the relevant provisions of law and thereafter, make necessary assessment to compensate the petitioners and complete the entire exercise as expeditiously as possible and within the outer limit of 5 (five) months from the date of receipt of a certified copy of this order.
10. The Judgment & Order dated 10.07.2017 passed in WP(C) No. 123/2016 shall stand reviewed to the extent indicated above.
11. The Review Petition is accordingly disposed of.