THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra Ordinary Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

Review Pet. No. 06 of 2015

Mr. Nar Bahadur Khatiwada,
aged about 66 years,
S/o late Dal Bahadur Khatiwada,
R/o 5th Mile Tadong, Gangtok,
East Sikkim.

... **Petitioner**.

versus

1. State of Sikkim
   Through the Secretary,
   Land Revenue Department,
   Government of Sikkim,
   Gangtok, East Sikkim.

2. Sub-Registrar/ District Collector,
   East District Collector,
   Gangtok, East Sikkim.

... **Respondents**.

Appearance:

Mr. Manoj Goel, Ms. Gita Bista and Mr. Shubodeep Roy, Advocates for the Review Petitioner.

Mr. J.B. Pradhan, Addl. Advocate General with Mr. Santosh Kr. Chettri, Ms. Pollin Rai, Asstt. Govt. Advocates, Mr. Thinlay Dorjee Bhutia and Ms. Roshni Chhetri, Advocates for the State-Respondents.

O R D E R

(01.12.2017)

Satish K. Agnihotri, CJ

Seeking review of the order dated 19th May 2015 rendered by this Court in W.P.(C) No. 09 of 2015, wherein and whereunder the writ petition was dismissed summarily, the instant petition is filed.

2. Re-examination of the impugned order is sought primarily on the ground that there is palpable error and miscarriage of justice. It is also contended *inter alia* that the principle of res judicata was wrongly applied when the petitioner was claiming relief under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013"), which has accrued subsequently.

3. The facts in brief, relevant for consideration and disposal of the review petition, is that the petitioner claiming to be the interested person, being in absolute possession of the property admeasuring 0.35 acres of land comprised in Khasra No. 713 and housing a single-storey building by virtue of a Gift Deed dated 10th December 1986, has preferred a writ petition,

being W.P.(C) No. 09 of 2015, under Article 226 of the Constitution of India, on 16th February 2015, seeking the following reliefs:

> "a. Issue writ, order or direction in the nature of certiorari or any other appropriate writ order or direction thereby setting aside entire Land Acquisition Proceedings including the award.
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> b. Declare the award is bad, illegal and *non est* in the eyes of law
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> c. Direct the Respondents to restore the possession of land in question to the Petitioner herein.
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> d. Alternatively, without prejudice to foregoing prayer to issue an appropriate writ, order or direction commanding the Respondents to work out the compensation under Section 24(2) Proviso of the 2013 Act.
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> e. To declare that the payment made to the erstwhile owner is not payment in the eye of law.
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> f. Issue or pass any writ, direction or order and any other relief(s) which this Hon'ble court may deem fit and proper in the facts of the case and in the interest justice;"

4. Learned Single Bench, having considered all aspects of the matter, dismissed the writ petition summarily holding that Section 24 (2) of the Act of 2013 is not applicable, as no proceedings under Land Acquisition Act, 1894 (hereinafter referred to as "the old Act of 1894") was pending and also physical possession of the land had already been taken under the award dated 15th March 1988.

5. It is beneficial, at this stage, to refer to the genesis of the case. The land in dispute including the house, which was allegedly gifted to the present petitioner, was acquired under the

old Act of 1894 under the award dated 15th March 1988, whereunder the compensation was determined to the tune of Rs.6,52,452/- inclusive of solatium, directing to make over the payment of compensation to Shri L.D. Kazi. Registration of the Gift Deed dated 10th December 1986 under which the petitioner is claiming title and possession, was declined by the Sub-Registrar on 24th July 1987, which was affirmed by the Registrar vide order dated 15th March 1988. In the meantime, a notification under Section 4(1) of the old Act of 1894 was issued intending to acquire the said land in question. The publication of notification was challenged in Writ Petition No. 05 of 1987, wherein the High Court directed that the proceedings of acquisition would continue but taking over of possession was stayed. During pendency of the writ petition, Section 6 notification under the old Act of 1894 was published on 25th August 1987. The said notification was further challenged by Mr. L.D. Kazi and the present petitioner in Writ Petition No. 48 of 1987, which was withdrawn on 30th November 1987. Subsequently, one more writ petition, being Writ Petition No. 16 of 1988 was filed by Mr. L.D. Kazi and the present petitioner, questioning the legality of both the notifications under Sections 4(1) and 6 (1) of the old Act of 1894 on 02nd September 1988. In the meantime, the award for acquisition of land in question

was passed, which came to be challenged in Writ Petition No. 18 of 1988 jointly by Mr. Kazi and the present petitioner. During the currency of Writ Petitions No. 16 of 1988 and 18 of 1988, Mr. Kazi sought permission to withdraw himself from the petitions, stating that he has revoked the Gift Deed and collected the compensation amount awarded for acquisition of the land and also handed over the land to the Government for public purpose.

6. Challenge to denial of the registration was the subject matter of the Writ Petition No. 6 of 1988, which was allowed on 24th May 1989, setting aside the order dated 15th March 1988 of the Secretary, Land Revenue Department with a direction to register the Gift Deed executed by Mr. Kazi Lhendup Dorji in favour of the petitioner. Thereagainst, a Special Leave Petition was preferred by the State of Sikkim, which was admitted and numbered as Civil Appeal No. 6707 of 1995. The Supreme Court dismissed the appeal by order dated 24th November 2004 observing as under:

> "The land, which was the subject matter of the Gift Deed, has already been acquired by the State and compensation has been paid to Respondent No. 1. Counsel appearing for the respondents states that the compensation has wrongly been paid to Respondent No. 1 as the same should have been paid to Respondent No. 2 by virtue of the Gift Deed in his favour. It is further stated by him that the writ petition challenging the constitutional validity of the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 filed by Respondent No. 2 having been dismissed by the High Court, Respondent No. 2 filed a Special Leave Petition in this Court on which notice has been issued.

> In view of the subsequent developments, without going into the dispute on merits, this appeal is dismissed. The question of law being academic in this case is left open to be decided in an appropriate case."

7. On 06th September 1990, the application of the alleged Doner, Mr. L.D. Kazi for withdrawal from the Writ Petitions No. 16 of 1988 and 18 of 1988 was allowed by the High Court and as such the present petitioner continued to prosecute both the writ petitions. The High Court vide order dated 11th August 2004 dismissed the writ petitions, upholding the acquisition proceedings. Thereagainst, a review petition was filed, which was also dismissed.

8. Assailing the legality of the orders rendered by the High Court in Writ Petitions No. 16 of 1988 and 18 of 1988, and order dated 01st August 2004 passed in Review Petitions No. 05 of 2004 and 06 of 2004, the petitioner preferred Special Leave Petitions, being Special Leave to Appeal (Civil) No. (s) 21982-21986/2004 in the Supreme Court. The Supreme Court, vide order dated 01st September 2005, dismissed the Special Leave Petitions observing that the petitioner has no locus standi to maintain these petitions. Further liberty was reserved to the petitioner to pursue the dispute regarding the alleged gift in accordance with law.

9. In the meantime, a Title Suit, being Title Suit No. 08/2012 was filed initially before the Civil Judge. Thereafter, on

amendment of valuation, the suit was transferred to the Court of District Judge, Special Division-I, claiming ownership and possession on the basis of alleged Gift Deed. The Court of District Judge, Special Division-II, by judgment dated 31st December 2012 dismissed the said Title Suit. Thereagainst, a Regular First Appeal, being RFA No. 02 of 2013 was preferred by the present petitioner. Learned Single Bench disposed of the appeal vide, judgment dated 15th July 2013, inter alia, passing the following orders:

> "(v) Relief (a) - It is declared that at the time when the Land Acquisition proceedings became complete by the passage of the award under Section 11 of the LA Act and taking over of possession, the appellant/plaintiff was in possession of the suit property having been put in possession of the same pursuant to Exhibit-1 Gift Deed dated 10.12.1986 executed by late L.D. Kazi the registered owner of the property in his favour. It is also declared that the respondents who were bound to register the above gift deed erred in not doing so and therefore the defect if any in the title of the plaintiff on account of non-registration of the gift deed was a defect wrongfully cast on the title by the defendants and therefore liable to be ignored by them in the matter of payment of compensation under Section 11 of Land Acquisition Act.
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> (vi) Relief (d) - In view of the decision taken under issue no. 6 as recast in this appeal and in view of the situation, I am not inclined to pass any decree in respect of compensation amount against the Government particularly as no such decree is specifically sought for. I find unable to pass any decree in respect of compensation amount against the legal heirs and representatives of late L.D. Kazi, as they are not on the array of parties. But I find that the appellant/plaintiff does have a legitimate grievance in that the compensation amount awarded under Section 11 which was due to him only was not paid to him instead was paid to a wrong person. I am, therefore, inclined to make the following observations and directions, which in my view may lead to the appellant/plaintiff securing relief for his grievance."

Further, a liberty was reserved to the appellant therein, the present petitioner, to institute a suit for recovery of the original

compensation wrongly paid to Shri L.D. Kazi against the legal representatives of Shri Kazi to the extent of assets left behind by late Kazi and now in their hands.

10. Feeling aggrieved, the State has preferred a Petition for Special Leave to Appeal, being SLP (C) No. 37317/2013, wherein the Supreme Court stayed the judgment dated 15th July 2013 and granted leave on 08th January 2014, thereafter. Thus, the appeal remains pending in the Supreme Court.

11. On admission of Special Leave Petition, as above, it appears that the petitioner has preferred the present W.P.(C) No. 09 of 2015, which was dismissed vide order dated 19th May 2015. This order is sought to be reviewed in this petition. Learned Single Bench, after considering all the aforestated facts in its entirety, came to the conclusion that the writ petition filed by the petitioner is not maintainable and also barred by principles of res-judicata. It was further observed that it also suffers from delay and laches. In so far as applicability of Section 24(2) of the Act of 2013 is concerned, it was held that the same is not applicable. Thus, the facts stand admitted that the compensation was paid to the owner of the land as found proved not only in the observations made by the Supreme Court in its order dated 12th September 2005 passed in SLP No.(s) 21982-21986/2004 but

also in the judgment dated 15th July 2013 rendered in RFA No. 02 of 2013. The appeal, thereagainst, is pending consideration before the Supreme Court of India.

12. Mr. Manoj Goel, learned counsel appearing for the petitioner would contend that the judgment requires review as the learned Single Bench failed to appreciate the ambit and scope of provisions of Section 24(2) of the Act of 2013. It is further contended that the possession of the petitioner on the land in question was never disputed. The petitioner, being the person interested, as defined in Section 3 (b) of the old Act of 1894, is entitled to compensation under the old Act of 1894, as the same was never granted. The observation that the compensation had been paid, was not correct, as the State had wrongly paid to the donor as admitted in various judgments..

13. Referring to the observation that review would also lie if the order has been passed on account of some mistake, laid in Inderchand Jain (Dead) Through LRs. v. Motilal (Dead) Through LRs.[1], Mr. Goel would contend that there was a mistake in not examining the provisions of Section 24(2) of the Act of 2013 in its perspective and as such review is maintainable. Mr. Goel has further referred to Shivdeo Singh and others v. State of Punjab

[1] (2009) 14 SCC 663

and others[2], and State of Rajasthan and another v. Surendra Mohnot and others[3], contending that finding of the impugned order that the suit is barred from the principles of res-judicata is a legal mistake and the same requires review. It is also contended that non-payment of compensation to the petitioner would clearly attract the provision of Section 24 (2) of the Act of 2013 to assess the compensation afresh and make over the same to the person interested.

14. Before adverting to the submissions made by the learned counsel appearing for the petitioner, it is apposite to examine the scope of review jurisdiction. In Shivdeo Singh (supra) referred by the learned counsel for the petitioner, a Constitution Bench of the Supreme Court held as under:

> "(8) ……It is sufficient to say that there is nothing in Art. 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. ……"

15. In Inderchand Jain (supra), cited by Mr. Goel, the Supreme Court laid the following principles: -

> **"33.** The High Court had rightly noticed the review jurisdiction of the court, which is as under:
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> "The law on the subject—exercise of power of review, as propounded by the Apex Court and various other High Courts may be summarised as hereunder:
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> (*i*) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.
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> (*ii*) Power of review may be exercised when some mistake or error apparent on the fact of record

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2 AIR 1963 SC 1909
3 (2014) 14 SCC 77

> is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.
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> (*iii*) Power of review may not be exercised on the ground that the decision was erroneous on merits.
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> (*iv*) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.
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> (*v*) An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*."
>
> ……"

16. In State of Rajasthan v. Surendra Mohnot (supra), again referred by Mr. Goel, the Supreme Court observed as under:

> "26. In the case at hand, as the factual score has uncurtained, the application for review did not require a long-drawn process of reasoning. It did not require any advertence on merits which is in the province of the appellate court. Frankly speaking, it was a manifest and palpable error. A wrong authority which had nothing to do with the *lis* was cited and that was conceded to. An already existing binding precedent was ignored. At a mere glance it would have been clear to the Writ Court that the decision was rendered on the basis of a wrong authority. The error was self-evident. When such self-evident errors come to the notice of the Court and they are not rectified in exercise of review jurisdiction or jurisdiction of recall which is a facet of plenary jurisdiction under Article 226 of the Constitution, a grave miscarriage of justice occurs. In appeal the Division Bench, we assume, did not even think it necessary to look at the judgments and did not apprise itself of the fact that an application for review had already been preferred before the learned Single Judge and faced rejection. As it seems, it has transiently and laconically addressed itself to the principle enshrined in Section 96(3) of the Code of Civil Procedure, as a consequence of which the decision rendered by it has carried the weight of legal vulnerability."

17. In Union of India v. Sandur Manganese and Iron Ores Limited and others[4], the Supreme Court examining the scope of review jurisdiction at length under Article 137 of the Constitution

[4] (2013) 8 SCC 337

of India read with Order 47 Rule 1 of the Code of Civil Procedure, 1908, held as under:

> "**23.** It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In *Parsion Devi* v. *Sumitri Devi* [(1997) 8 SCC 715], this Court held as under: (SCC p. 719, para 9)
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> > "*9.* Under Order 47 Rule 1 CPC a judgment may be open to review inter alia 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'."
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> **24.** This Court, on numerous occasions, had deliberated upon the very same issue, arriving at the conclusion that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC."

18. In Board of Control for Cricket, India and another v. Netaji Cricket Club and others[5], the Supreme Court has observed as under:

> "**88.** We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in S. 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.
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> **89.** Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.
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> **90.** Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also

[5] AIR 2005 SC 592

> call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in O. 47, R. 1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*"."

19. In Lily Thomas and others v. Union of India and others[6], the Supreme Court held as under:

> "**52.** The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji* [(1971) 3 SCC 844 : AIR 1970 SC 1273] held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in *S. Nagaraj* v. *State of Karnataka*, 1993 Supp (4) SCC 595 held:
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> "Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury* v. *Sukhraj Rai*, AIR 1941 FC 1, the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae* v. *Bijai Govind Singh* (1836) 1 Moo PC 117 that an order made by the Court has final and could not be altered:

[6] AIR 2000 SC 1650

"… nevertheless, if by misprision in embodying the judgments, errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in…. The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.' Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (*c*) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest in justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength."

20. In Kamlesh Verma v. Mayawati and others[7], the Supreme Court, analyzed afresh the ambit and scope of review jurisdiction in detail and held as under:

> "**15.** 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. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. This Court in *Parsion Devi* v. *Sumitri Devi* [(1997) 8 SCC 715] held as under: (SCC pp. 718-19, paras 7-9)
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> > "*7.* It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd.* v. *Govt. of A.P.* [AIR 1964 SC 1372] this Court opined: (AIR p. 1377, para 11)
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> > > '*11.* What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error*.'
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> > *8.* Again, in *Meera Bhanja* v. *Nirmala Kumari Choudhury* [(1995) 1 SCC 170] while quoting with approval a passage from *Aribam Tuleshwar Sharma* v. *Aribam Pishak Sharma* [(1979) 4 SCC 389] this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.
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> > *9.* Under Order 47 Rule 1 CPC a judgment may be open to review inter alia 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

[7] (2013) 8 SCC 320

review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

(emphasis in original)

16. Error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. This Court, in *Lily Thomas* v. *Union of India*[(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] held as under: (SCC pp. 250-53, paras 54, 56 & 58)

"*54.* Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

'**1.*Application for review of judgment.***— (1) Any person considering himself aggrieved—

(*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(*b*) by a decree or order from which no appeal is allowed, or

(*c*) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.'

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order 40 Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

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56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once

a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

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58. Otherwise also no ground as envisaged under Order 40 of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in *Sarla Mudgal case* [*Sarla Mudgal* v. *Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in *Sarla Mudgal case* [*Sarla Mudgal* v. *Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569]. We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words 'any other sufficient reason appearing in Order 47 Rule 1 CPC' must mean 'a reason sufficient on grounds at least analogous to those specified in the rule' as was held in *Chhajju Ram* v. *Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] . Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In *T.C. Basappa* v. *T. Nagappa* [AIR 1954 SC 440], this Court held that such error is an error which is a patent error and not a mere wrong decision. In *Hari Vishnu Kamath* v. *Ahmad Ishaque* [AIR 1955 SC 233], it was held: (AIR p. 244, para 23)

> '*23.* … [I]t is essential that it should be something more than a mere error; it must

> be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? The learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.
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> Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in—*Batuk K. Vyas* v. *Surat Borough Municipality* [ILR 1953 Bom 191 : AIR 1953 Bom 133], that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.'
>
> Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 read with Order 40 of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the judgment in *Sarla Mudgal case* [*Sarla Mudgal* v. *Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . The petition is misconceived and bereft of any substance."

17. In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court in *Kerala SEB* v. *Hitech Electrothermics & Hydropower Ltd.* [(2005) 6 SCC 651] held as under: (SCC p. 656, para 10)

> "*10.* … In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. The learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate

court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in *Jain Studios Ltd.* v. *Shin Satellite Public Co. Ltd.* [(2006) 5 SCC 501], held as under: (SCC pp. 504-505, paras 11-12)

"*11.* So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."

and summarized the principle as under :

"**20.1.** When the review will be maintainable:

(*i*) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(*ii*) Mistake or error apparent on the face of the record;

(*iii*) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram* v. *Neki* [(1921-22) 49 IA 144 :

> (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius*[AIR 1954 SC 526 : (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India* v. *Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : JT (2013) 8 SC 275]
>
> **20.2.** When the review will not be maintainable:
> (*i*) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
> (*ii*) Minor mistakes of inconsequential import.
> (*iii*) Review proceedings cannot be equated with the original hearing of the case.
> (*iv*) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
> (*v*) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
> (*vi*) The mere possibility of two views on the subject cannot be a ground for review.
> (*vii*) The error apparent on the face of the record should not be an error which has to be fished out and searched.
> (*viii*) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
> (*ix*) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

21. The aforestated ratio was referred with the approval in Vikram Singh alias Vicky Walia and another v. State of Punjab and another[8], referred by Mr. J.B. Pradhan, learned Additional Advocate General.

22. On studied examination of the aforestated decisions laid down by the Supreme Court, the following principles for maintainability of review are discernible:

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

[8] (2017) 8 SCC 518

(ii) Review may be entertained when there is some mistake or palpable error which is self-evident and is not detectable by the long drawn process of reasoning.

(iii) The error must strike at mere looking of the record.

(iv) Jurisdiction of review is not exercisable merely on the ground that the decision is erroneous.

(v) There should be apparent grave miscarriage of justice.

(vi) On mere ground that other view on the subject is possible, the review cannot be maintained. In other words, power of review can be invoked for correction of mistake but not to substitute a view.

(vii) In a review petition, it is impermissible to reappreciate the evidence to reach a different conclusion. Review is not a rehearing of a original matter.

(viii) Review will be maintainable on discovery of new and important fact or evidence which after the exercise of due diligence was not within the

knowledge of the petitioner or could not be brought by him.

(ix) Review may be exercised for application of wrong authority or law that falls within the ambit of error apparent on the face of the record.

(x) Sufficient reasons, as specified in Order 47 Rule 1 CPC has to be read analogous to those specified in the statutory provision.

23. Applying the well-settled principles to the fact of the case, it is manifest that the challenge to the acquisition proceedings failed, the possession of land in question was taken over by the Government and also compensation was paid to the donor i.e. owner of the land in dispute. In such an event, the State cannot be asked to pay the compensation twice over. Accordingly, liberty was granted to the petitioner in the order rendered in RFA No. 02/2013, which is pending consideration in appeal before the Supreme Court, to institute a suit for recovery of the original compensation wrongly paid to Shri L.D. Kazi against his legal representatives.

24. Section 24 (2) of the Act of 2013 contemplates that where an award under Section 11 of the old Act of 1894 has been made five years or more prior to the commencement of the Act

of 2013 but the physical possession of the land has not been taken or the compensation has not been paid, such proceedings shall be deemed to have lapsed. Further, where award has been made but the compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the old Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. Learned Single Bench in its order dated 15th September 2015, which is sought to be reviewed here, held that the proceedings under Section 24(2) of the Act of 2013 is not applicable. There appears to be no mistake, as in the case on hand, it is an admitted position that the award was made long before and full compensation in respect of the entire land in question, thereafter, was also paid to the land owner therein. The question of person interested ought to have been examined in the earlier proceedings under the old Act of 1894. Under the provisions of the Act of 2013, person interested cannot agitate afresh making the State to pay further compensation under the new Act and as such no alleged miscarriage of justice and grave mistake as pleaded by the petitioner, has occurred in the order sought to be reviewed in this petition. It is not a case of

discovery of new facts after due diligence or some other sufficient reasons, as contemplated under Order 47 Rule 1 CPC.

25. Resultantly, I am not inclined to entertain this petition.

26. At this stage, it is not necessary for me to go into other submissions/averments made by the petitioner in respect of amount of compensation, right of the petitioner to get the compensation and also the fact as to whether the petitioner's possession was admitted or not. Consideration of these submissions is tantamount to rehearing of the petitioner on appreciation of documents and evidence, which is impermissible in review.

27. For the reasons mentioned hereinabove, the review petition is dismissed.

28. No order as to costs.

Chief Justice
01.12.2017

Approved for Reporting : ~~Yes~~/No.
Jk/ Internet : Yes/~~No~~.