

State of Odisha and Another Vs. Sanjay Das and Another

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Court : Orissa

Decided On : Feb-26-2014

Appellant : State of Odisha and Another

Respondent : Sanjay Das and Another

Judgement :

HIGH COURT OF ORISSA: CUTTACK In the matter of applications under Section 114 read with Order XLVII, Rule1 C.P.C. for review of judgment dated 22.02.2012 passed in W.P.(C) No.13185 of 2006. -----RVWPET No.224 of 2012 Sanjaya Das Petitioner Versus State of Odisha and others For Petitioner Opp. Parties : For Opp. Parties : Mr.Y.Das, Senior Advocate Mr.Sandeep Parida (2) Addl. Government Advocate (for O.Ps. 1 and

2) M/s Prasant Ku. Mohanty & M.K.Panda (for O.P. No.3) RVWEPT No.332 of 2012 State of Odisha and another Petitioner Versus Sanjay Das and another For Petitioner Opp. Parties : For Opp. Parties : Addl. Standing Counsel M/s Nirmal Ch. Mohanty & P.Ranjan (for O.P. No.1) RVWEPT No.7 of 2013 Cuttack Development Authority Petitioner Versus Sanjay Das and others For Petitioner Opp. Parties : For Opp. Parties : M/s Prasant Ku. Mohanty & M.K.Panda ----- 2 P R E S E N T: THE HONOURABLE SHRI JUSTICE I. MAHANTY AND THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA Date of Judgment: 26.02.2014 B.N. Mahapatra, J.All the above three Review Petitions have been filed with a prayer to review of our judgment dated 22.02.2012 passed in W.P.(C) No.13185 of 2006.

2. To deal with various grounds taken in three Review Petitions the background facts relevant for disposal of the said petitions in a nut shell are that in W.P.(C) No.13185 of 2006, the petitioner challenged the land acquisition proceeding in relation to petitioners land. The reliefs, as prayed for, are for quashing of the land acquisition proceeding and for direction to the opposite parties for No.taking any steps to interfere with the peaceful possession of the petitioner over the land under acquisition till disposal of the writ petition.

3. The above said writ petition was disposed of on 22.02.2012, inter alia, holding as follows: 29. So, it would be suffice for this Court to hold that though the petitioner succeeds in the writ petition, we need No.quash the acquisition proceedings and award as prayed for by the petitioner. We hold that the land acquisition proceedings and award are void ab initio in law. But as the land is required to be acquired for the purpose of forming residential lay out and the allotment of sites in favour of the residents as rightly contended by Mr. Mohapatra, learned Govt. Advocate that public purpose is the prime consideration against the private interest , we have to mould the reliefs as prayed for by the petitioner. In this regard, in the case of Ramniklal N. Bhutta and another V. State of 3 Maaharashtra and others, reported in AIR 1997 SC 1236 upon which reliance has been rightly placed by the learned Govt. Advocate, the Apex Court has held at paragraph 10, the relevant portion of which reads thus: . The courts have to weigh the public interest visa-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceeding is No.the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible No.advisable to say. We hope and trust that these considerations will be duly borne in mind by the Courts while dealing with challenges to acquisition proceedings.

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30. Applying the aforesaid observation to the fact situation of the present case, we mould the reliefs as prayed in this petition by granting the following reliefs to the petitioner. We declare that the acquisition proceedings and award are void ab initio in law, but we decline to quash the same by moulding the reliefs by directing the opp. parties to see that the compensation for the acquired land of the petitioner is determined on the basis of the present market value as on this date keeping in view the observation of the Privy Council in the case of Vyricherla Narayana Gajapatiraju V. Revenue Divisional Officer, Vizagapatam (supra) and determine the compensation and award shall be passed within a period of four months from the date of receipt of this judgment.

31. Since we are No.interfering with the quashing of the acquisition proceedings except by moulding the relief to give compensation, it is also further directed to the Development Authority to grant five contiguous sites measuring 40 ft. x 60 ft. in the area in question to the petitioner and his family members for which the present rate of allotment shall be charged and that amount shall be deducted from out of the 4 compensation that would be determined and payable to the petitioner. The said direction is issued by this Court following the directions issued by the apex Court in the case of Bondu Ramaswamy & Ors. V. Bangalore Development Authority & Ors., (2010) 7 SCC 129.

32. With the above declarations, observations and directions, the writ petition is disposed of. Rule issued, but no costs.

4. The various grounds taken in three Review Petitions are as follows:5. Review Petition No.224 of 2012 has been filed by the writ petitioner on the following grounds: (a) This Court has moulded the relief placing reliance in the case of Pasupuleti Venkateswarlu Vs. The Motor and General Traders, AIR 1975 SC 1409 and Bondu Ramaswamy Vs. Bangalore Development Authority and others, (2010) 7 SCC 129. These cases are decided on the peculiar facts and only reiterated power of moulding. Even in the judgments relied upon moulding of reliefs were necessitated by change of circumstances between the date of decree and the date of appeal. In the case at hand, there is no such change between filing of the writ

petition and the judgment. Therefore, the reasonings given to mould the relief are No.applicable to the facts of the case. (b) Section 11 of the Land Acquisition Act is the only repository for grant of compensation. The High Court under Article 226 could No.have exercised statutory power under Section 11 in the guise of moulding relief; 5 (c) Once the Court held that the proceeding to be void ab initio, the only relief available was to quash the acquisition proceeding; (d) The consistent view of the Honble Supreme Court is that moulding of relief is made when the relief prayed for canNo.be given. In the instant case, since notification is vitiated, the only course was to quash the proceeding; (e) Whenever the Honble Supreme Court moulded the relief in the teeth of a statutory power, it did so under Article 142 of the Constitution; (f) The finding of this Court in the judgment is that possession of the land has No.been taken from the owner of the land and what has been taken by the Collector is only paper possession but No.the physical possession. Admittedly, after development of the land in Ac.2.93 decimals where a park and roads have been built, Ac.6.93 decimals are available and neither any third party interest has been created No.any development has taken place. Therefore, moulding if at all would have been just and reasonable, the same should have been done by making available Ac.6.93 decimals land to the petitioner and paying compensation for the rest; (g) Moulding canNo.be said to have been done in the guise of doing substantial justice or for public purpose in view of the finding of this Court that the proceedings stand vitiated and void ab initio; (h) There is no concession by the petitioner before the Court to mould the relief; 6 (i) Mr.Y.Das, learned Senior Advocate placing reliance on the judgment of the Honble Supreme Court in the case of Om Prakash Gupta Vs. Ranbir B.Goyal, 2002(2) SCC 256, submitted that the Court has power to take note of subsequent events and mould the relief if the relief as claimed originally has by reason of subsequent events become inappropriate and canNo.be granted.

6. Further, placing reliance on the judgment of the Honble Supreme Court in the case of S.Nagaraj Vs. State of Karnataka, 1993 (Suppl.) 4 SCC 595, Mr.Das submitted that in exercise of plenary jurisdiction, it is within the domain of this Court to pass appropriate orders as prayed for by the Review petitioner to avoid injustice.

7. Mr. Das further submitted that after 74th amendment to the Constitution, under Article 243, urban planning including town planning, regulation of land use and construction of building, planning for economic and social development, roads and bridges vests exclusively with the Municipality. By the time the judgment was delivered the CDA ceased to have statutory power under Section 3 of the Orissa Development Authorities Act. Therefore, the petitioner invokes the plenary jurisdiction of this Court as it strikes the very root of the power.

8. In the review petition bearing RVWPET No.332 of 2012 filed by the State, challenge has been made to the impugned judgment basically on three grounds: 7 (a) The L.A. Act provides sufficient remedy for the person affected and the writ petitioner having No.taken recourse to the provisions of the said Act claiming compensation is debarred from enforcing such remedy available under the said statute through the writ petition; (b) The provisions of Urban Land (Ceiling & Regulation) Act, 1976 having No.been considered to come to a conclusion as to whether the writ petitioner can hold such an extent of vacant land within the urban agglomeration area, petitioner is No.entitled to get any relief. (c) Twenty-two years of delay in filing the writ petition to enforce the remedy has No.been considered by this Court inasmuch as Limitation Act does No.create right, but bars the remedy after lapse of the statutory period.

9. Cuttack Development Authority seeks review of the impugned judgment on the following grounds: (a) Belated challenge to the LA notifications under Section 4(1) and Section 6 after lapse of 23 years had been wrongly entertained; (b) Since the acquisition notifications were published in the year 1983 and 1984, the petitioner or his predecessor in interest had no locus standi to prefer any objection under Section 5-A, as their interest was crystallized on 03.02.1991 on the basis of the judgment passed by this Honble Court in OJ.No.2652 of 1987; (c) The validity of the notifications under the LA Act which was the subject matter of challenge in OJ.No.2731 of 1988 disposed of on 8 04.08.1994 had been ignored though copy of the said judgment had been annexed to the counter affidavit.

10. Mr.P.K.Mohanty, learned counsel appearing for CDA submitted that judicial review is No.akin to adjudication of a case on merit as an appellate authority. At

best, while exercising powers of review, this Court may correct patent errors apparent on the face of the records, resulting in miscarriage of justice or violation of principles of natural justice. Application for review is by no means an appeal in disguise whereby a decision can be re-adjudicated or reconsidered. The pre-requisites for maintaining the application for review are to be strictly applied in the present case. There is no accidental error or mistake. It is also No.a case where the review application has been filed on the ground of discovery of new matter which the parties were No.aware after exercise of due diligence.

11. Mr.Mohanty placing reliance upon judgment of Haridas Das Vs. Usharani Banik, (2006) 4 SCC 78, submitted that the grounds urged by the writ petitioner in the Review Petition do No.come within the prescribed limit, namely, error apparent on the face of the record but are conscious findings/directions. The judgment had been passed after full consideration of the arguments made by the counsels and therefore this Court should No.be engaged to delve into the points advanced in the application for review.

12. Now, let us examine whether the grounds taken in the three review petitions for review of the impugned order/judgment are legally sustainable. 9 13. In respect of the ground taken by the writ petitioner in review petition with regard to the power of the High Court to mould relief, it may be noted that in Dwarikanath Vs. IT Officer, AIR 1966 SC 81, the Honble Supreme Court held that the power of High Court under Article 226 canNo.be equated to the English courts to issue prerogative writs and the High Court has the wider power and can mould relief to meet the peculiar and complicated requirements of this Country.

14. The grounds taken by the writ petitioner that CDA has no jurisdiction in view of Article 243 of the Constitution after 74th amendment canNo.be a ground for review as no such ground was taken in the Writ Petition No.it was argued at the time of hearing of the Writ Petition.

15. In the impugned order, this Court has No.moulded the relief on the concession of the petitioner. On the other hand, giving sufficient reasons and relying upon the decisions of the Honble Supreme Court, more particularly on the case of Ramniklal N.Bhutta and another (supra) this Court moulded the relief. Therefore,

this canNo.be a ground for review.

16. The ground taken by State and the C.D.A. in the review petition with regard to delay and laches on the part of the petitioner in approaching this Court in W.P.(C) No.13185 of 2006 canNo.be a valid ground for review. Such a ground was No.taken by the State before the Court either in the counter or at the time of hearing of the writ petition. However, in the impugned judgment this Court on the basis of the contentions of the C.D.A. in this regard has formulated question No.(i) to the effect that whether the 10 petition is liable to be rejected solely on the ground of delay and laches.. This question along with question No.(ii) has been dealt with in detail in paragraphs 15 to 20 of the impugned judgment.

17. Non-consideration of order/judgment dated 04.05.1994 canNo.be a ground for review of the impugned judgment because had the said order/judgment dated 04.05.1994 passed in OJ.No.2731 of 1988 been taken into consideration, the relief granted in the impugned judgment would No.have been changed. This Court in its order dated 04.05.1994 passed in OJ.No.2731 of 1988 have No annulled the acquisition in question and directed CDA to allot each of the petitioners in that case a plot of land in category C and D. In the impugned judgment dated 22.02.2012 this Court was No.inclined to quash the acquisition proceeding and directed to grant five contiguous sites measuring 40 ft. x 60 ft. in the area in question to the petitioner and his family members. Moreover, in the earlier writ petition, i.e., OJ.No.2731 of 1988, the petitioner in the impugned judgment dated 22.02.2012 was No.a party.

18. It would be appropriate to note here that in view of the provisions of Section 114 read with Order XLVII, Rule 1 of the CPC and law laid down by the Privy Council and the Honble Supreme Court in several judgments some of which hereinafter referred to, the impugned order canNo.be reviewed on the grounds taken in these three Review Petitions.

19. Section 114 read with Order XLVII, Rule 1, CPC prescribes the limitations for entertaining a review petition. The limitations are that the party 11 filing the application for review has discovered a new and important matter or evidence after exercise of due diligence, which was No.within his knowledge or could No.be

produced by him at the time when the decree or order was passed, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. The aforesaid limitations are prescribed in a crystal clear language. The expression any other sufficient reason. contained in Order XLVII, Rule 1, means sufficient reason which is analogous to those specified immediately to it in the provision of Order XLVII, Rule 1, CPC.

20. In Chhajju Ram Vs. Neki & Ors., AIR 1922 PC 112, it was held by the Privy Council that analogy must be discovered between two grounds specified therein namely; (i) discovery of new and important matter or evidence; and (ii) error apparent on the face of record, before entertaining the review on any other sufficient ground.

21. The Honble Supreme Court in Haridas Das (supra), held that a perusal of the Order XLVII, Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matter or evidence which after exercise of due diligence was No.within the knowledge of the applicant; (b) such important matter or evidence could No.be produced by the applicant at the time when the decree was passed or order made; (c) on account of some mistake or error apparent on the face of record or any other sufficient reason. Therefore, some mistake or error, if made ground for review, it must be apparent on the face of record and if a party 12 files an application on the ground of some other sufficient reason, it has to satisfy that the said sufficient reason is analogous to other conditions mentioned in the said rule i.e. discovery of new and important matter or evidence which it could No.discover with due diligence or it was No.within his knowledge and, thus, could No.produce at the initial stage. Apparent error on the face of record has been explained to include failure to apply the law of limitation to the fact found by the Court or failure to consider a particular provision of a statute or a part thereof or a statutory provision has been applied though it was No.in operation. Review is permissible, if there is an error of procedure apparent on the face of the record e.g. the judgment is delivered without notice to the parties, or judgment does No.effectively deal with or determine any important issue in the case though argued by the parties. There may be merely a smoke-line demarcating an error simpliciter from the error apparent on the face of record. But

there canNo.be a ground for entertaining the review petition in the former case. Sufficient reason. may include disposal of a case without proper notice to the party aggrieved. Thus, if a person comes and satisfies the Court that the matter has been heard without serving a notice upon him, review is maintainable for the sufficient reason. though there may be no error apparent on the face of record.

22. In the case of Northern India Caterers (India) Ltd. -Vrs.- Lt. GoverNo.of Delhi, AIR 1980 SC674, it has been held that a party is No.entitled to seek a review of a judgment delivered by the Court merely for the 13 purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. Whatever may be the nature of the proceeding, it is beyond dispute that a review proceeding canNo.be equated with the original hearing of the case and the finality of the judgment delivered by the Court will No.be reconsidered except where a glaring omission or a patent mistake or a grave error has crept in earlier by judicial fallibility..

23. In Haridas Das (supra) Honble Supreme Court held that the parameters of review are prescribed in Order XLVII, Rule 1 of the CPC. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are No.possible. Neither of them postulates a rehearing of the dispute because a party had No.highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order XLVII which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall No.be a ground for review of such judgment. Where the order in question is appealable, the aggrieved 14 party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection.

24. In Government M/s. of Thungabhadra Andhra Pradesh, Industries Ltd. represented by -Vrs.the The Deputy Commissioner of Commercial Taxes, Anantapur, AIR 1964 SC 1372, the Supreme Court held as follows: There is a distinction which is real, though it might No.always be capable of exposition, between a mere erroneous decision and a decision which could be characterized 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. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case or error apparent on the face of the record would be made out.

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25. Law is well-settled that power of review canNo.be confused with the appellate power. In Devaraju Pillai Vs. Sellayya Pillai, AIR 1987 SC 1160, the Honble Supreme Court held that if the party is aggrieved by a judgment of a Court, the proper remedy for such party is to file an appeal against that judgment. A remedy by way of an application for review is entirely misconceived and if a Court entertained the application for review then it has totally exceeded its jurisdiction in allowing the review merely because it takes a different view on a construction of the document.

26. In Delhi Administration Vs. Gurdip Singh Uban & Ors., AIR 2000 SC 3737, the Honble Supreme Court deprecated the practice of filing review application observing that review, by no means is an appeal in disguise 15 and it canNo.be entertained even if application has been filed for clarification, modification or review of judgment and order finally passed for the reason that a party canNo.be permitted to circumvent or bypass the procedure prescribed for hearing a review application.

27. The Honble Supreme Court in Jain Studios Ltd., through its President Vs. Shin Satellite Public Co. Ltd., AIR 2006 SC 2686, held that the power of review canNo.be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is No.rehearing of an original

matter. A repetition of old and overruled argument is No.enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases. Thus, it is the settled proposition of law that review lies when there is error apparent on the face of record and such an error crept in inadvertently or otherwise and it is in the interest of justice, such a mistake should be rectified.

28. In any event, no case for review under Order XLVII, Rule 1, CPC is made out. The well-known parameters of review, as indicated above, having No.been fulfilled, there is no scope for review. The review petitions are accordingly dismissed. B.N.Mahapatra,J.I. Mahanty,J.I agree. .. I. Mahanty,J.Orissa high Court, Cuttack. The 26th February, 2014/ssd/ss/skj

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