

V. Srinivas Vs. Mysore IT Solutions Pvt. Ltd., and Others

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Court : Karnataka

Decided On : Nov-10-2016

Judge : Jayant Patel & The Honorable Mr. Justice Aravind Kumar

Appeal No. : RP No.295, 296, 330, 2289 of 2013, 578 of 2014 in WA No.1495, 1494, 1947, 1583, 2288, 2289 of 2008 (LA-KIADB) c/w

Appellant : V. Srinivas

Respondent : Mysore IT Solutions Pvt. Ltd., and Others

Judgement :

(Prayer: This petition is filed under Order 47 Rule 1 of CPC, Praying to review the Order dated 26/11/2012 passed in W.A.No.1495/2008, on the file of the Hon ble High Court of Karnataka, Bangalore.)

1. As in all petitions, review is sought against the common order passed by this Court, they are being considered simultaneously.

2. All petitions are directed against the common order dated 26.11.2012 passed by the Division Bench of this Court in W.A.No.1495/2008 and allied matters (hereinafter referred to as the Common Order) whereby for the reasons recorded in the order, the appeals came to be allowed, the order passed by the learned Single Judge was set aside, the main writ petitions were dismissed and the impugned notification was upheld.

3. We have heard Mr. Uday Holla, learned Senior Counsel along with Sri Suraj Govinda Raj, Sri Arun Pradesh, learned counsel appearing for the petitioners and Mr. Arun Kumar K., Ms. Varuni Mohan, Sri. Dyan Chinnappa.M, Sr. Counsel, Mr. Ravi shankar R., learned Advocates for M/s. Anup S.Shah Law Firm for Petitioner No.7 in RP No.330/13 and RP No.578/2014 and Mr.S.S.Naganand, learned Sr. Counsel along with Mr.P.N.Manmohan, learned counsel for the petitioner in RP 295/2013 and Mr.Jayakumar S.Patil, and Sri Shashikiran Shetty, learned Sr. Counsel along with Sri B.B. Patil learned counsel for R2 and R3, Mr. D.N. Nanjundareddy, learned Senior counsel along with Sri Nishanth A.V., learned Counsel for R-1 and Sri Vasanth. V Fernandes, learned HCGP for R-4 at length.

4. The principal contentions raised in the review petitions can be summarized as under:

(1) This Court in the common order recorded that the original petitioners i.e. owners of the land had sold the property and therefore the learned Judge being carried away by the fact that petitioners are all agriculturists, small time farmers, they are living in their ancestral house and their houses are going to be demolished was erroneous and said finding was not based on any evidence at all. As per some of the petitioners herein, they did not sell the land and they have continued to remain as owner and occupier of the property in question.

(2) This Court in the common order declined to maintain the order of the learned Single Judge on the ground that the guidelines issued in the circular dated 3.3.2007 were later to the notification under Section 28(4) of the Karnataka Industrial Areas Development Act, 1966 (in short the Act) dated 19.12.2005 and therefore, the learned Single Judge could not have found fault with the acquiring authority based on the said circular. The petitioners contend that, even if the circular is subsequent to the notification under Section 28(4) of the Act dated 19.12.2005 coupled with the aspects that in case of some of the land owners based on circular dated 3.3.2007, the benefits are extended of de-notifying the land or dropping of the acquisition would be considered in land acquisition matter when the Court was to examine of the legality and validity of the acquisition proceedings. Having not done so, the error apparent on the face of the record has

been committed by the Court in the common order.

(3) One of the main contentions in the appeals on behalf of the respondent-petitioner herein was that, only some of the parcels of the land are taken up for acquisition whereas, large number of adjoining lands and adjoining parcels of the lands are to be dropped from the acquisition and therefore, the public purpose of establishing the Industry would not be served and hence the ultimate decision taken by the learned Single Judge for quashing of the acquisition proceedings did not call for interference but the Division Bench in the common order did not properly consider the said aspects and hence there is error apparent on the face of the record.

5. We may at the outset record that by now it is well settled that the scope of review petition is very limited to the errors apparent on the face of the record and it cannot be considered on the grounds which may be available in an appeal against the order of the lower forum before the higher forum. The scope of the appeal is wide enough to re-appreciate the evidence and material on record and the appellate Forum may record a different conclusion in place of the lower authority. While undertaking the process of review, even if the Court finds that some aspects were not properly narrated or not fully narrated or differently narrated, the Court may also examine as to whether it would have made any material difference in the ultimate decision taken as per the order sought to be reviewed against.

6. We may usefully refer to the decision of the Apex Court in case of Haridas Das vs. Usha Rani Banik (Smt.) and others reported at (2006) 4 SCC 78 at paragraphs 13 to 18 which read as under:

13. In order to appreciate the scope of a review, Section 114 of the CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it may make such order thereon as it thinks fit. The parameters are prescribed in Order XLVII of the CPC and for the purposes of this lis, permit the defendant to press for a rehearing on account of some mistake or error apparent on the face of the records or for any other sufficient reason . 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 not possible. Neither of them postulate a rehearing of the dispute because a party had not 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 in Rule 1 of the 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 not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection. This Court in *M/s. Thungabhadra Industries Ltd. (in all the Appeals) v. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur*, [AIR 1964 1372] held as follows:

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 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 states one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

14. In *Meera Bhanja v. Smt. Nirmala Kumari Choudary* [AIR 1995 SC 455] it was held that:

It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order XLVII, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* speaking through Chinnappa Reddy, J. has made the following pertinent observations:

It is true there is nothing in Article 226 of the Constitution to preclude the 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. But, there are definitive limits to be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit. That would be in the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of error committed by the Subordinate Court. (SCC pp.172-73, para 8)

15. A perusal of Order 47 Rule 1 show that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.

16. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (AIR 1979 SC 1047) this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p.390, para 3)

It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* (AIR 1963 SC 1908) there is nothing in Article 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. But, there are definitive limits to the exercise of the power of

review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

17. The judgment in Aribam s case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale [AIR 1960 SC 137] were also noted:

An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ.

18. It is also pertinent to mention the observations of this Court in the case of Parsion Devi v. Sumitri Devi (1997(8) SCC 715). Relying upon the judgments in the cases of Aribam s (supra) and Smt. Meera Bhanja (supra) it was observed as under:

Under Order XLVII, 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 XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, 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.

7. The aforesaid dicta of the Apex Court shows that if the error is to be established by the long drawn process of reasoning on the point where there may be conceivably two opinions, such cannot be said to be error apparent on the face of the record. Where the error which is not self evident has to be detected by the process of reasoning can hardly said to be error apparent on the face of the record justifying the Court to exercise its power of review. A review petition , it must be remembered as a limited purpose and cannot be allowed to be an appeal in disguise .

8. We may also add by usefully referring to another decision of the Apex Court in case of Kamlesh Verma vs. Mayawati and others reported at (2013) 8 SCC 320 and more particularly observations made under the head of review jurisdiction from paragraph 9 onwards and ultimately the Apex Court summarized the review power at paragraphs 20 to 20.2. as under:

Summary of the Principles:

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

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 has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius and Ors., (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 vs. Sandur Manganese and Iron Ores Ltd. and Ors.

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 re-heard 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

9. The aforesaid dicta would indicate that review may be maintainable if discovery of new or important matter of evidence which inspite of the due diligence which was within the knowledge of the petitioner but could not be produced before the Court or there is mistake or error apparent on the face of the record or any

sufficient reason meaning thereby a sufficient on the ground analogous to those specified in the rules. But the review will not be maintainable on the repetition of old and overruled argument on the ground of minor mistake of inconsequential import.

10. Review in any manner is not an appeal in disguise but only lies on parent error. Mere possibility of two views of the subject cannot be a ground for review. The error apparent should be on the face of the record and should not be an error which has to be fished out and searched. The appreciation of the evidence on record is fully within the domain of the appellate Court and cannot be permitted to be advanced in the review petition. In any case, review is not maintainable when the same relief sought at the time of arguing the main matter has been negated.

11. After taking into consideration the aforesaid broad scope and ambit of the power of review, we may examine as to whether the order reviewed against calls for review or not.

12. We may at this stage broadly state the scope of judicial review in challenge to the acquisition proceedings as under:

- (a) If the mandatory procedure as required under the Act has not been followed.
- (b) The objections after the preliminary notification before the final notification are not considered at all.
- (c) What is the public purpose is essentially the domain of the acquisition officer to decide based on the material and the evidence before him. It is not open to the Court to substitute its opinion in place of the opinion of the acquisition officer that there is no public purpose unless the finding recorded is absurd on the face of it.
- (d) It may be true that ground of hardship to the owner of the property which is sought to be acquired is one of the relevant circumstances, but, when the interference of the Court is called for on such ground, the Court has to weigh the public purpose as against the personal interest since in any case the owner of the property is to get the appropriate compensation as per the market value of the property coupled with the solatium for exercise of sovereign power of acquiring the

property and other benefits as per the provisions of the Act, 1966 (hereinafter referred to as the Act) read with the provisions of the Act.

(e) The guidelines issued by the higher authority to the Land Acquisition Officer are by name guidelines . Therefore, the room is available to make departure from the guidelines on valid grounds but, when one has to test the arbitrariness of the decision, such per se would not operate as a bar to the exercise of the power by the Land Acquisition Officer while taking objective decision on subjective facts on the acquisition in a particular case.

13. We may consider as to whether the grounds referred to hereinabove would call for invoking power of review or not?

14. On the first ground, it appears that even if it is considered that all the review petitioners were before the learned Single Judge (as well as Division Bench), did not sell the land and only some sold the land may be for a part of it, then also such aspects would be of the inconsequential effect to the ultimate decision, because while considering the question of hardship, it may be relevant to find out as to whether the property is held by the original owner or they have already sold but, as observed earlier, when the compensation is to be paid as per the market price coupled with solatium etc., and the larger public interest is taken into consideration for establishing industrial projects, it can be said that the learned Single Judge committed error in interfering with the acquisition on the ground of hardship. In our view, even if the contention is considered for the sake of examination, since it is of inconsequential effect, the power of review would be unavailable because this Court in the common order did observe that the owners of the properties are to get the compensation as per the Act.

15. On the second contention, the guidelines in any case are of 2007 whereas, the final notification under Section 28(4) of the Act is published as back as in the year 2005. Therefore, even otherwise also it was inconceivable to interfere with the final notification on the basis of guidelines which came into existence roughly after a period of two years. It is hardly required to be stated that the guidelines cannot have retrospective operation in any case. Further, the contention raised for subsequent circumstances to be considered in the writ power under Article 226 of

the Constitution for review is misconceived inasmuch as, a fact or a material was already in existence but disclosed subsequently may be one of the relevant aspects but, not the facts or the material which has come into existence much after the final notification issued under Section 28(4) of the Act. Hence, we find that even if the contention is considered and examined, the same is of inconsequential effect. Hence, no power of review would be available.

16. On the third contention that dropping of acquisition proceedings or for denotifying of the land, we find that barring a small portion in the subject acquisition, there is no dropping out of around 100 acres of the acquisition proceedings, only for three acres, the proceedings are dropped thereby, it cannot be said that the public purpose would be frustrated. Further, Acquisition Officer, after considering the objections, has exercised the power for maintaining the public purpose for the lands which are proposed to be acquired by issuing the final notification under Section 28(4) of the Act. Therefore, it is not possible to accept that the public purpose would be frustrated and there will be no public purpose if out of 100 acres of the land, 97 acres of the land is considered for final acquisition.

17. As regards adjoining land, the contention is on a non-existent premise because they are subject matter of different land acquisition proceedings. It cannot be mixed up with the present acquisition proceedings whose legality and validity are under challenge. Even otherwise also, if acquisition of 97 acres of land for a public purpose of establishment of industrial park or industries, it cannot be said that no public purpose shall be achieved. Further, if the contention is entertained on the ground that the public purpose would be frustrated if the negligible parcel or a portion is dropped from the acquisition proceedings, no scope for consideration of objection would be available to the Land Acquisition Officer. On the contrary, the fact that the land acquisition officer found that a particular small area of about three acres deserves to be dropped from the final acquisition would show the application of mind on the part of the Land Acquisition Officer. Hence, the said contention even if considered and examined, is of inconsequential effect.

18. We may record that, the learned counsel for the petitioners did rely upon certain decisions for showing that in these respective matters in the facts of the

case, the powers of review were exercised or that the acquisition was interfered with but, in our considered view, such decisions are clearly distinguishable on the facts mainly because, in the present case, even if the contention is considered and examined, when we have found that it is of inconsequential effect, the said decisions would be of no help to the petitioners.

19. We may also record that, the learned counsel for the petitioners addressed the Court on various grounds which included the ground other than those for review power as if this Court to exercise the appellate power. In our view, as observed by us hereinabove, based on the observations of the Apex Court in the above referred Judgments, review petitions/applications cannot be termed as appeal in disguise . Hence, all such grounds for convincing the Court to take a different view than the view taken by this Court in the common order are outside the scope of review powers.

20. In view of the aforesaid, we find that all petitions are meritless. Hence, dismissed.

Considering the facts and circumstances, no order as to costs.

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