

(2021) 01 CHH CK 0016

Chhattisgarh High Court

Case No: REVP No. 151 Of 2019

Municipal Corporation Jagdalpur

APPELLANT

Vs

Thalesh Chandra Dubey And Ors

RESPONDENT

Date of Decision: Jan. 19, 2021

Acts Referred:

- Code Of Civil Procedure 1908 - Order 47 Rule 1
- Constitution Of India, 1950 - Article 300A

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Arun Kumar Shukla, Prasun Kumar Bhaduri, Sunita Jain

Judgement

Goutam Bhaduri, J

1. Heard.

2. The instant review petition has been filed to review the order dated 04.07.2019 passed in WPC No. 714/2019. The review petition appears to have

been filed on 05.08.2019. The following substantive order was passed in WPC No. 714/2019:-

â€œ8. The Sahmati Patra which is relied on by the Municipal Corporation, which speaks of the fact that the parties thereto do not want compensation.

This document do not contain the name of the petitioner and the signature of the petitioner is also not there on such document, the same is Annexure

P-2. Therefore, the submission of the respondent No.1 that the petitioner has relinquished his right of compensation by such Sahmati Patra/ consent

letter cannot be accepted. The letter which is filed as Annexure R-1 by the Municipal Corporation, the petitioner's signature has been obtained but

reading of such letter do not show that the petitioner at any time disclaimed his right to get the compensation. Consequently, if other persons have not claimed the compensation, the petitioner cannot be enveloped by other adjacent land owners consent who decided to leave compensation for acquisition of property for the reason the road and drain is constructed.

9. Article 300A of the Constitution gives the right to the person and mandates that no person shall be deprived of his property save by authority of law.

The Municipal Corporation as a State cannot therefore resort to an arm twisting method so as to shelve the provisions of Article 300A. The Act of 2013 to acquire the land exists in the statute book, therefore, the Municipal Corporation who is a body corporate is also expected to adhere to the rules of the law of land instead to follow forceful acquisition of land. Under the circumstances, it is directed that the respondent No.1, Municipal Corporation, shall commence the proceeding for acquisition of land under the Act of 2013 and shall calculate the extent of land acquired of the petitioner and the necessary orders may be passed as per law and compensation should be paid to him.

10. Considering the age of the petitioner that he is senior citizen, it is directed that the aforesaid exercise shall be carried out within the outer limit of six months from the date of receipt of a copy of this order.

11. With such observation/direction, the writ petition stands disposed of.â€

3. Learned counsel for the petitioner (Municipal Corporation) would submit that one Thalesh Chandra Dubey has concealed certain facts that he has sold the property to different persons and the drain and the road was prepared for the benefit of all, which he deliberately suppressed in the initial petition WPC No. 714/2019. It is stated that it would be evident from the Nazri Naksha dated 26.07.2019 which is filed in this case and the map would show that the petitioner has sold the plot 1 to 7 of Om Prakash Jain to Sureshwari Jain. Therefore under the circumstances the petitioner cannot be given the compensation and the order requires to be reviewed.

(4) Opposing the argument, learned counsel for the respondent No. 1 in this review petition refers to Annexure P/3 dated 15.06.2017 which reads as under:-

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5. He further refers to document Annexure P/6 and would submit that the communication made by the Commissioner Nagar Palik Nigam Jagdalpur on 21.01.2019 in which it was stated that the road was made on the basis of the consent given by the landlord. It is stated that no such consent was ever given by the petitioner. The content of Annexure P/6 dated 21.01.2019 reads as under:-

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(6) He would further submit that under these circumstances without payment of compensation of the land to the petitioner on the basis of the false submission the road have been made by the Municipal Corporation.

(7) Perused the documents, the initial order passed by this Court and also the documents annexed to the writ petition. Reading of Annexures P/3 and P/6 would show that according to Municipal Corporation, the road was constructed after obtaining the permission whereas the consent which was filed vide Annexure R/2 do not bear the signature of the respondent (the petitioner in original writ petition). It appears that though the reference was

tried to be made by the Municipal Corporation to the sale deed but they tried to change the stand in the review petition. The review petition is also supported by the affidavit of one Netram Chandrakar and the reply is also filed and supported by Netram Chandrakar. This Court in the earlier occasion has observed since the consent was not obtained before the road was constructed as such the land owner cannot be deprived of his right otherwise than in due course of law and the demarcation was ordered for. It appears that in order to frustrate this order the review petition has been filed with the motivated object.

(8) In respect of review of the case, the Supreme Court in Yashwant Sinha and others vs. Central Bureau of Investigation and another (2020) 2 SCC

338 (para 58) has reiterated the decision rendered in State of West Bengal and Others vs. Kamal Sengupta and another (2008) 8 SCC 612 wherein at para 21 the Court held as under:-

“ At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justiciae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.”

9. Further at para 22 in State of West Bengal vs. Kamal Sengupta (Supra), the term “mistake or error apparent” has been explained which lays down that the error apparent must be evident per se from the record of the case and need not require a detailed examination, scrutiny and elucidation either of the facts or the legal position. If the error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a

point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision.

10. The Supreme Court further reiterated that 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 to Rule 1 of Order 47 which states 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.

11. Therefore, applying the aforesaid principle, I do not find any substance in the review petition. Considering the manner in which the same person

has filed the review petition and also filed an affidavit in the earlier litigation, it appears that the entire efforts were made to shelve the order without

justifiable cause. Consequently, the cost of Rs. 5,000/- is imposed for such frivolous litigation. Apart from the fact, it is directed that the Municipal

Corporation shall comply with the order of this Court passed in the earlier occasion within a period of 45 days from the date of receipt of copy of this

order.