Bharat Sanchar Nigam Ltd. Vs Nita Sharan Sinha

Court: Patna High Court

Date of Decision: June 22, 2022

Acts Referred: Code Of Civil Procedure, 1908 â€" Order 47 Rule 1
Land Acquisition Act, 1894 â€" Section 4, 18

Hon'ble Judges: Anil Kumar Sinha, J

Bench: Single Bench

Advocate: Archana Sinha, Alok Kumar @ Alok Kr Shahi, Md. Khurshid Alam, Md. Asif Kalim, Arun Kumar Sinha

Final Decision: Dismissed

Judgement

1. The instant review application has been preferred for review of the judgment/order dated 11.05.2017 passed by HonÃ¢â‚¬â„¢ble Mr. Justice

Mungeshwar Sahoo (as His Lordship then was) in First Appeal No. 803 of 1994 by appellant, Bharat Sanchar Nigam Limited (in short

Ã¢â‚¬ËœBSNLÃ¢â‚¬â„¢), previously Ã¢â‚¬ËœUnion of IndiaÃ¢â‚¬â„¢. By the aforesaid judgment the First Appeal No. 803 of 1994 filed by the petitioner and Opposite

Party No. 5 herein was dismissed.

2. An Interlocutory Application bearing no. 02/2019 has been filed for condonation of delay of 02 years, 01 month and 19 days in filing of the review

application. A notice on the Interlocutory Application was issued by this Court vide order dated 22.10.2019 and in pursuance thereof, opposite

parties/respondents have appeared and filed their counter affidavit on the point of limitation as well as on merit.

3. For the reasons stated in the condonation application and taking into consideration impersonal entity of the petitioner/corporation and the

bureaucratic nature of its functioning and the fact that at several stages the officers take their own time to reach a decision, the delay in filing the

present review application is, hereby, condoned.

4. The brief facts involved in this review application is, that for the purpose of construction of buildings and staff quarters for Telephone Exchange,

Microwave Project at Nawada, the lands of landholders including Respondents/Opposite Parties No. 1 to 4 were acquired vide Land Acquisition Case

No. 02 of 1986-87. A Notification under Section 4 of Land Acquisition Act was published on 14.04.1986 and after following the statutory procedure

the award was prepared. The land owners being dissatisfied with the award of the Collector filed applications under Section 18 of the Land

Acquisition Act giving rise to L.A. Case Nos. 19/1994, 20/1994 and 21/1994 for enhancement of compensation claiming the value of the land at the

rate of Rs. 10,000/- per decimal. The present case arises out of L.A. Case No. 21/1994.

5. All the three above mentioned L.A. Cases were tried together and one set of evidence regarding market value of the land acquired was adduced by

both the parties. On 19.07.1994, compensation amount was determined at the rate of Rs. 3,947/- per decimal being the value of the land with statutory

interest by the common judgment and award passed by the 1st Additional Sessions Judge, Nawada inter alia taking into consideration sale statement

regarding land sold under 376 registered sale deeds.

6. The State of Bihar and BSNL aggrieved by the common judgment and award passed by the reference court preferred three First Appeals being

First Appeal No. 803/1994 arising out of L.A. Case No. 21/1994, First Appeal No. 804/1994 arising out of L.A. Case No. 20/1994 and First Appeal

No. 805/1994 arising out of L.A. Case No. 19/1994.

7. The First Appeal No. 804/1994 arising out of common judgment and award passed by reference court was dismissed by this Court vide order dated

14.05.2010. Civil Review application No. 266/2010 was filed by the petitioner/BSNL which got dismissed for default on 18.12.2014. However, on

20.06.2019 after a lapse of about four years and six months, a restoration application bearing MJC No. 2308/2019 has been filed for restoration of

Civil Review No. 266/2010.

8. First Appeal No. 805/1994 arising out of common judgment and award was disposed of by the Lok Adalat taking into consideration the Notification

of Department of Revenue and Land Reforms, Government of Bihar vide Letter No. 1544 dated 03.12.2014 and the compromise arrived at between

the parties. On 20.06.2019, a writ petition bearing CWJC No. 12965/2019 was filed against the order of the Lok Adalat and a Bench of this Court vide

its order dated 01.07.2019 has stayed the award dated 06.12.2014 passed by Lok Adalat held at Patna High Court.

9. Learned counsel for the review petitioner during course of the argument submits that First Appeal No. 804/1994 arising out of L.A. Case No.

20/1994 was dismissed by HonÃ¢â‚¬â„¢ble Mr. Justice Dipak Misra (as His Lordship then was) on 14.05.2010 on the basis of the judgment delivered by

this Court in First Appeal No. 65 of 1995 and other analogous appeals decided on 30.04.2010. The BSNL filed a review application bearing Civil

Review No. 266/2010 for review of order dated 14.05.2010 which got dismissed for default on 18.12.2014. However, BSNL filed restoration

application bearing MJC No. 2308/2019 which is pending for hearing. Accordingly, the submission is that the filing of review and MJC by the BSNL

itself indicates non acceptance of rate of land as determined by the reference court.

10. She further submits that the First Appeal No. 805/1994 arising out of L.A. Case No. 19/1994 was disposed of on the basis of compromise by the

Lok Adalat is also not acceptable to the BSNL inasmuch as the BSNL was not represented by its counsel in Lok Adalat and the counsel appearing

for Union of India was not authorized by the BSNL to enter into the compromise. Hence, a writ petition has been filed by the BSNL baring CWJC

No. 12965/2019 for setting aside the compromise award passed by the Lok Adalat on 06.12.2014 and a Bench of this Court vide its order dated

01.07.2019 granted stay of the award dated 06.12.2014 passed by the Lok Adalat. The filing of writ application itself goes to show that the BSNL has

not accepted the rate of land as decided by the reference court.

11. The thrust of argument of learned counsel appearing for the review petitioner is that this Court has wrongly decided that the BSNL/appellant had

conceded the rate fixed by reference court @ Rs. 3,947/- per decimal as the other two connected appeals were dismissed or compromised. As such,

the observation/finding of this Court that the rate fixed by the reference court/court below has been accepted by the BSNL is a mistake apparent on

the face of the record. Hence, the finding of this court in para-13 of the judgment and view that the present First Appeal will also be governed by the

judgment and award passed by the High Court in First Appeal No. 804/1994 is erroneous when a review petition arising out of order passed in First

Appeal No. 804/1994 is still pending. The judgment and order passed by this Court in First Appeal No. 804/1994 shall not operate as res judicata. Each

appeal has its own merit and this Court failed to consider the merit of the appeal and incorrectly applied the principle of res judicata.

12. Learned counsel for the review petitioner relied upon the judgments of Apex Court in the case of New Okhla Industrial Development Authority

(Noida) v. Yunus & Ors passed in CA No. 901/2022 arising out of SLP Ã‚Â© No. 9927/2020, in the case of Special Land Acquisition Officer & Ors. v.

N. Savitha passed in Civil Appeal Nos. 2052-2053 of 2022, and a judgment of Punjab & Haryana High Court has also been relied upon i.e., Randhir

Singh v. State of Haryana & ors passed in CWP No. 1624 of 2015.

13. Learned counsel appearing for Opposite Parties No. 1 to 4/Respondents submits that the present review application has been filed in abuse of the

process of law and in order to deprive the Respondents from enjoying the fruits of litigation/award. First Appeal No. 804/1994 arising out of L.A.

Case No. 20/1994 involving an area of 2.59 Acres of land was dismissed on merit by this Court on 14.05.2010 and the Civil Review filed by the BSNL

for review of the order passed in First Appeal No. 804/1994 bearing Civil Review No. 266/2010 was dismissed for default on 18.12.2014. As such, on

the date of passing of the judgment under review on 11.05.2017 no petition or proceeding was pending pertaining to First Appeal No. 804/1994 and the

order/judgment passed in First Appeal No. 804/1994 attained its finality. However, after lapse of four years and six months from the date of dismissal

of Civil Review No. 266/2010, restoration application bearing MJC No. 2308/2019 was filed on 20.06.2019 for restoration of Civil Review. As on the

date of judgment and award passed in the First Appeal No. 803/1994 i.e., on 11.05.2017, no application was pending pertaining to First Appeal No.

804/1994. As such, the subsequent filing of restoration application or development, if any, cannot be made basis for review of the judgment/award.

14. Learned counsel further submits that the judgment under review has been passed on its own merit and on the basis of submission made by the

learned counsel appearing for the appellant that before the Lok Adalat, the valuation of the property acquired was less amount, therefore, it was

compromised and further all the amounts have already been paid to the landholders/respondents and, therefore, lenient view may be taken in granting

rate of interest. Accordingly, the submission is that there is no error apparent on the record and the present review application is an appeal in disguise

and it is settled principle of law that the review court does not sit in appeal over its own order and rehearing of the matter is not permissible in law. He

further submits that while considering the application for review the court must confine its adjudication with reference to material which was available

at the time of initial decision and the subsequent development cannot be taken into consideration for declaring the initial order/decision as vitiated by

error apparent.

15. Learned counsel for the respondents/Opposite Parties placed reliance upon the Division Bench Judgment passed in the case of Bishwambhar

Kumar v. State of Bihar & Ors reported in 2016(2) PLJR 625 (DB).

16. At last, learned counsel for the Respondents submits that land of Respondents/Opposite parties was acquired in 1986 and compensation amount

was determined on 19.07.1994 and after 28 years of determination still the Opposite Parties/respondents are waiting for final settlement.

17. I have heard learned counsel for both the parties and perused the material on record. It is not in dispute that by a common judgment and award

three reference cases were disposed by the 1st Additional Sessions Judge, Nawada on 19.07.1994 by which compensation amount was determined @

3947/- per decimal with statutory interest. It is also not in dispute that three appeals were preferred by the appellants along with State of Bihar

including the present appeal bearing First Appeal No. 803/1994, First Appeal No. 804/1994 and First Appeal No. 805/1994. First Appeal No. 804/1994

was dismissed on merit by this Court on 14.05.2010 on the basis of submission made by the learned counsel appearing for State/appellant that the

appeal is covered by the judgment delivered in First Appeal No. 65/1995 and other connected appeals decided on 30.04.2010. Accordingly, First

Appeal No. 804/1994 was dismissed in the light of judgment passed in First Appeal No. 65/1995 and another analogous appeals. It is also evident that

on the date of delivery of judgment and award i.e., 11.05.2017 in First Appeal No. 803/1994, no application for review and or restoration was pending

before this Court and the value of the land determined by the reference court stood confirmed in F.A. No. 803/1994. This Court while deciding the

First Appeal No. 803/1994 took note of the fact that the judgment and order passed by this Court in FA No. 804/1994 will operate as res judicata. The

findings arrived at by this Court at para-13 is as follows:-

Ã¢â‚¬Å“13. In view of this settled proposition of law laid down by the Supreme Court, the judgment and order passed by this High Court in First Appeal

No. 804/1994 will operate as res-judicata because it will be deemed that the matter questioning the impugned judgment and award has already been

heard by the High Court and finally decided. In such view of the matter the High Court again cannot reopen the matter and say that the market rate

fixed by the Land Acquisition Judge is incorrect. As stated above, the judgment and order will operate as res-judicata and this first appeal also will be

governed by the judgment and award passed by the High Court in First Appeal No. 804 of 1994.Ã¢â‚¬â€‹

18. It further appears from the record particularly paragraph-7 of the judgment under review that learned counsel appearing for the appellant

submitted before Lok Adalat that the valuation of the property acquired was less amount , therefore, it was compromised. It also appears from the

said paragraph of the judgment under review that learned counsel for appellant/Union of India submitted that all the amounts toward market value of

the land have already been paid to the landholders/respondents and therefore, lenient view may be taken in granting rate of interest.

19. Taking into account the submission advanced by the learned counsel appearing for the appellant that the principal amount has already been paid

and the fact that the court below has granted interest as provided under the statute this Court came to the conclusion that the rate of interest awarded

by the Land Acquisition Judge is not arbitrary and excessive. Accordingly, finding no merit in the First Appeal, the same was dismissed.

20. The argument advanced by the learned counsel for review petitioner that a restoration application (MJC No. 2308/2019) was filed on 20.06.2019

for restoration of Civil Review No. 266/2010 arising out of First Appeal No. 804/1994 and further a writ petition filed on 20.06.2019 challenging the

compromise award passed by Lok Adalat in CWJC No. 12965/2019 was heard by a Bench of this Court and the award dated 06.12.2014 passed by

the Lok Adalat has been stayed on 01.07.2019 is neither here nor there inasmuch as it is settled principle of law that happening of subsequent event or

development cannot be taken note of for review of original order. The judgments relied upon by the learned counsel appearing for review petitioner

are not relevant in the facts of the present case.

21. The HonÃ¢â‚¬â„¢ble Supreme Court in the case of Sasi (Dead) through L.Rs v. Aravindakshan Nair & Ors. reported in (2017) 4 SCC 692 spelt out

the nature, scope and power of review and its ambit. The error has to be self-evident and is not to be found out by a process of reasoning. Following

paragraphs of the judgment are relevant which are being quoted for ready reference:-

Ã¢â‚¬Å“ 6. The grounds enumerated therein are specific. The principles for interference in exercise of review jurisdiction are well settled. The Court

passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provision are satisfied.

7. In Thungabhadra Industries Ltd. v. Govt. of A.P. , the Court while dealing with the scope of review had opined: (AIR 1964 SC 1372, para 11)

Ã¢â‚¬Å“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.

8. In Parsion Devi v. Sumitri Devi : (1997) 8 SCC 715, the Court after referring to Thungabhadra Industries Ltd. (supra), Meera Bhanja v. Nirmala

Kumari Choudhury : (1995) 1 SCC 170 and Aribam Tuleshwar Sharma v. Aribam Pishak Sharma : (1979) 4 SCC 389, held thus:(Parsion Devi case

supra, SCC p. 719, para 9)

Ã¢â‚¬Å“9. Under Order 47 Rule 1 Code of Civil Procedure 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 Code of Civil

Procedure. In exercise of the jurisdiction under Order 47 Rule 1 Code of Civil Procedure 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"".

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self-evident and is not to be

found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings.Ã¢â‚¬â€‹

22. HonÃ¢â‚¬â„¢ble Supreme Court in another judgment in the case of Kamlesh Verma v. Mayawati & Ors reported in (2013) 8 SCC 320 has laid down

the principles of review and the circumstances when the review will not be maintainable in paragraphs 17, 18, 19, 20, 20.1, 20.2 which are quoted

hereinbelow:-

Ã¢â‚¬Å“17. In a review petition, it is not open to the Court to re-appreciate 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 State Electricity Board v. Hitech Electrothermics and Hydropower Ltd. and Ors. :

(2005) 6 SCC 651, held as under:(SCC p. 656, para 10)

Ã¢â‚¬Å“10Ã¢â‚¬Â¦Ã¢â‚¬Â¦...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. 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 re-hearing 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 re-open 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)

Ã¢â‚¬Å“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.

19. 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 of Code of Civil

Procedure. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point

is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible

under the review jurisdiction.

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 Ã¢â‚¬Å“any other sufficient reasonÃ¢â‚¬ have been interpreted in Chajju Ram v. Neki (AIR 1922 PC 112) and approved by this Court in Moran

Mar Basselios Catholicos v. Most. Rev. Mar Poulose Athanasius (AIR 1954 SC 526) to mean Ã¢â‚¬Å“ a reason sufficient on grounds at least analogous

to those specified in the ruleÃ¢â‚¬. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd [(2013) 8 SCC

337].

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.

23. In view of the above discussions on facts as well as law and having gone through the material on record and considering the argument advanced

by the parties, I am of the considered opinion that the review petitioner has failed to point out error apparent on the face of record warranting review

of the judgment dated 11.05.2017 passed in First Appeal No. 803/1994. It is now well settled that the power of review may be exercised on the

discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking

review or could not be produced by him at the time when the order was made and it may be exercised where some mistake or error apparent on the

face of the record is found but it may not be exercised on the ground that the decision was erroneous on merits, the same would be the domain of the

court of appeal, the power of review is not to be confused with appellate powers which may enable the appellate court to correct errors committed by

the subordinate court. It is also settled principle of law that while considering the application for review the court must confine its adjudication with

reference to the material which was available at the time of initial decision. The subsequent event or development cannot be taken into account for

review of the original order/decision. The review proceeding cannot be equated with the original hearing of the case and a party is not entitled to seek

review for the purpose of re-hearing and fresh decision of the case.

24. Accordingly, I come to the conclusion that the review petitioner has failed to establish error or mistake apparent on the face of the record and is

merely seeking the review of the judgment on the basis of subsequent filing of restoration as well as writ petition arising out of First Appeal No. 804 &

805 of 1994, I find no merit in this review application. As a result, the review application is dismissed.

25. Before parting with this order/judgment, I take note of the fact that award was passed by the reference court in the year 1994 and despite lapse of

about 28 years, the respondents/Opposite parties are waiting for final settlement inasmuch as this Court has been informed that the principal amount

has already been paid to the respondents/Opposite Parties by the review petitioner and only the statutory interest awarded by the court is to be paid

for which Execution Case No. 1/1995 arising out of First Appeal No. 803/1994 is pending. The judgment creditors/opposite parties herein have waited

for about 27-28 years in order to get the full benefits/fruits of the award/litigation and the judgment debtor, somehow, by filing review and or

Miscellaneous applications delayed the payment of compensation/interest to the judgment creditors under the award. Since review application has

already been dismissed, I direct the executing court to finally decide and dispose the Execution Case No. 1/1995 within a period of three months from

the date of production/receipt of a copy of this judgment/order.