



GAHC010217522018

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./172/2018

SAMSUL HOQUE AND 8 ORS
S/O LATE ABDUL JUBBAR,
VILLAGE KADAMONI PATHAR, PO AND PS JURIA, DIST NAGAON, ASSAM,
782124

2: AKBAR ALI
S/O LATE SABED ALI
VILLAGE KADAMONI PATHAR
PO AND PS JURIA
DIST NAGAON
ASSAM
782124

3: JOYNUL ABDIN
S/O LATE MOHAMMAD ALI MUNSI
VILLAGE KADAMONI PATHAR
PO AND PS JURIA
DIST NAGAON
ASSAM
782124

4: ABBAS ALI
S/O LATE RUSTOM ALI
VILLAGE KADAMONI PATHAR
PO AND PS JURIA
DIST NAGAON
ASSAM
782124

5: MOZIBUR RAHMAN
S/O LATE ABDUL MALEK
VILLAGE KADAMONI PATHAR
PO AND PS JURIA
DIST NAGAON



ASSAM
782124

6: ALAL UDDIN
S/O LATE SHENGU BEPARI
VILLAGE KADAMONI PATHAR
PO AND PS JURIA
DIST NAGAON
ASSAM
782124

7: ABDUL SATTAR
S/O LATE KASHEM ALI
VILLAGE KADAMONI PATHAR
PO AND PS JURIA
DIST NAGAON
ASSAM
782124

8: ALIM UDDIN
S/O LATE JODU BEPARI@ JODU SK
VILLAGE KADAMONI PATHAR
PO AND PS JURIA
DIST NAGAON
ASSAM
782124

9: NOSER ALI
S/O LATE ABDUL GONI
VILLAGE KADAMONI PATHAR
PO AND PS JURIA
DIST NAGAON
ASSAM
78212

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE AND DISASTER MANAGEMENT
DEPARTMENT, JANATA BHAWAN, DISPUR, GUWAHATI 781006

2:THE DEPUTY COMMISSIONER
NAGAON
DIST NAGAON ASSAM
782001

3:THE SETTLEMENT OFFICER



NAGAON
DIST NAGAON
ASSAM
782001

4:THE CIRCLE OFFICER
RUPAHI REVENUE CIRCLE
JURIA
PO AND PS JURIA
DIST NAGAON
ASSAM
78212

Advocate for the Petitioner : MR. A J SARMA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT

13.12.2022

Heard Shri PD Nair, learned counsel for the review applicants. Also heard Shri R. Borpujari, learned Standing Counsel, Revenue Department whereas Shri J. Handique, learned counsel has appeared for the State respondents.

2. By this application, a review has been sought for in respect of an order dated 21.05.2018 passed by the Single Bench of this Court in WP(C)/3518/2017. By the aforesaid order, the writ petition was dismissed holding the same to be without any merits.

3. Before going to the facts or the grounds of review, this Court is reminded of the limited role of a Review Court.

4. By taking the spirit of the Section 114 read with Order 47 of the Code of Civil Procedure, the grounds of review is limited to the following:

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.

5. The Hon'ble Supreme Court in a catena of decisions has laid down that a Review Court is not a Court of Appeal where any error can be corrected. It is only those errors which are palpable and apparent on the face of the records that a Review Court can entertain.

6. In the case of ***Shivdev Singh & Ors. Vs. State of Punjab & Ors.***, reported in **AIR 1963 SC 1909**, the Hon'ble Supreme Court has clarified that there is no restriction in Article 226 of the Constitution of India for exercising the power of review as, it is a Court of plenary jurisdiction. However, it has been held that there are definitive limitations and are not to be exercised on the ground that the decision was erroneous on merits, as the same could be a matter within the domain of an Appellate Court. It has further been clarified that a review power should not be confused with appellate power which may enable an Appellate Court to correct all matters of error committed by a subordinate court.

7. The aforesaid view has been uniformly followed by the Hon'ble Supreme Court, including in the landmark case of ***Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma***, reported in **(1979) 4 SCC 389**, a case which had gone from this High Court.

8. In the case of **(2013) 8 SCC 320, Kamlesh Verma Vs. Mayawati & Ors.**, the following have been laid down by the Hon'ble Supreme Court:

“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" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius 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.

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 negated.”

9. In the recent decision dated 18.08.2022 in the case of **(2022) SCC OnLine 1034, S Madhusudhan Reddy Vs. V Narayana Reddy & Ors**, a Three Judges' Bench of the Hon'ble Supreme Court has reiterated the aforesaid law laid down in the case of **Kamlesh Verma (supra)**.

10. Having those principles in mind, the instant case is required to be proceeded with.

11. The applicants, who are the writ petitioners had claimed to be landless persons, who were allotted land by the Government in the year 1960. The aforesaid land was covered by Dag No. 90 of Kadamoni Pathar village under Juria Mouza of Rupahi Revenue Circle in the district of Nagaon. The prayer in the writ petition was for a direction to issue land allotment / settlement to the petitioners, who were occupying the land in question.

12. In the aforesaid writ petition, affidavit-in-opposition was filed by the Circle Officer, Rupahi Revenue Circle and in paragraph 3 of the same it was stated that on 01.04.1960, the Deputy Commissioner, Nagaon had made temporary allotment to 44 numbers of beneficiaries for six months only and the aforesaid land was a Village Grazing Reserve (VGR) land. This Court vide the aforesaid order dated 21.05.2018 had observed that the land in question which was a VGR land was allotted for a period of

six months only by which no right to claim settlement had accrued upon the petitioners. The Court had also observed that as held by a catena of decisions, there is no right to claim to settlement of VGR land and on those two major considerations, the writ petition was held to be without merits and accordingly dismissed.

13. Shri Nair, learned counsel for the applicants has submitted that the observation of this Court regarding allotment being made for a period of six months is not only erroneous but has occurred due to oversight of the records. By drawing the attention of this Court to the concerned order, the learned counsel has submitted that by the same order, certain lands were allotted to different schools and for such allotment a time of six months was stipulated for production of relinquishment petitions in respect of their patta land, relinquishment in favour of the institution, failing which the allotment would be cancelled. The learned counsel submits that stipulation of allotment being made for six months is not supported by the records and therefore, he submits that the order in question is liable to be reviewed.

14. As regard the second portion of the consideration namely, VGR land, the learned counsel for the applicants submits that the order states that the VGR land was de-reserved and therefore, the embargo for allotment of VGR land may not be applicable in the present case.

15. Shri Borpujari, learned Standing Counsel, Revenue Department however submits that error, if any, in the order dated 21.05.2018 is not of that kind which requires rectification by a Review Court and the remedy is to file an appeal against the order dated 21.05.2018 which have not been done till date. On merits, the learned Standing Counsel submits that the records do not justify the contention of the order of 09.03.1960 which has been specifically stated in the affidavit filed on 19.11.2020 in this review application. The learned Standing Counsel submits that the presumption that the land was de-reserved is not supported by the records as no exercise under Rule 95-A of the **Rules for the Allotment of Grazing Grounds** under **Land and**

Revenue Regulations, 1886 appears to have been carried out and in view of the strict stipulation in the form of an embargo laid down by the Hon'ble Supreme Court, more particularly in the case of **Jagpal Singh Vs. State of Punjab** reported in **(2011) 11 SCC 396**, the question of de-reserving of VGR land for allotment to private individuals is totally out of question. As regards the provision of law for allotment of land to refugees, there is a requirement to have refugee certificates which till now, has neither been pleaded nor brought on records.

16. Shri Nair, learned counsel for the applicants responded that permeably the forefather of the petitioners would be possessing refugee certificates. However, in absence of such certificates before this Court either in way of pleadings or materials placed, this Court cannot accede to the said presumption.

17. The learned counsel for the applicants appears to be correct in contending that the order in question dated 21.05.2018 had committed an error in making an observation that the allotment was meant for six months only. Even if this Court accepts that submission that the aforesaid error is apparent on the face of the records, the same will not have a major effect on the outcome of this petition as the petitioners have to stand the test of fulfilling the limited ground to maintain a review petition. The writ petition was filed for a direction to the Deputy Commissioner, Nagaon to issue land allotment or settlement order and not against any order of eviction and in that case, it is the bounden duty of the petitioners to establish their own rights independently which, in the considered opinion of this Court has not been discharged. That apart, this Court while dismissing the writ petition had also taken into consideration that the petitioners do not possess any rights to claim settlement of VGR land. Taking into account the law laid down by the Hon'ble Supreme Court in the aforesaid case of **Jagpal Singh (supra)** and also the fact that the observation of de-reserving the aforesaid land not being supported by the records or any exercise done under Rule 95-A of the Rules, this Court is not persuaded to treat this case as an exceptional one requiring any review.



18. In that view of the matter, the instant application is rejected.

19. No order, as to costs.

JUDGE

Comparing Assistant