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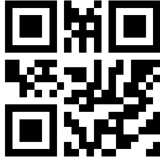

THE GAUHATI HIGH COURT

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

Case No. : I.A.(Civil)/2143/2020 In
Rev. Pet. Sl. No.9702/2020

AMRI KARBI DEVELOPMENTAL SOCIETY AND 2 ORS.
HAVING ITS HEAD OFFICE AT SAMATA (FONG-ARI), P.O. SAMATA, P.S. SONAPUR, DIST.- KAMRUP(M), PIN- 782402, REP. BY ITS PRESIDENT SRI HAREN PHANGCHO.

2: SRI HAREN PHANGCHO
S/O- LATE SASHI PHANGCHO
R/O- MARKANG
P.O. NORTAP
P.S. SONAPUR
DIST.- KAMRUP
ASSAM
PIN- 782402
PRESENTLY SERVING AS THE PRESIDENT OF AMRI KARBI DEVELOPMENTAL SOCIETY.

3: SRI BHAGEN TERON
S/O- LATE CHANDRA KANTA TERON
R/O- VILL.- TALONI
P.O DHUPGURI
P.S. KHETRI
DIST.- KAMRUP(M)
ASSAM
PIN- 782403
PRESENTLY SERVING AS THE SECRETARY OF AMRI KARBI DEVELOPMENTAL SOCIETY

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, WPT AND BC DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:THE STATE ELECTION COMMISSION
HOUSEFED COMPLEX
DISPUR
GUWAHATI- 781006.

3:TIWA AUTONOMOUS COUNCIL
REP. BY ITS PRINCIPAL SECRETARY
MORIGAON
ASSAM.

4:SRI BISHNU RANGHANG
S/O- CHIKAN RANGHANG
R/O- VILL.- REWA MAHESWAR
P.O. GANDHINAGAR
DIST.- KAMRUP
ASSAM.

5:SRI DHARMESWAR DALOI
R/O- VILL.- MAIRAKUCHI
P.O. DIGARU
P.S. SONAPUR
DIST.- KAMRUP
ASSAM.

6:SRI RAJU GORAIT
R/O- KENDUBASTI
P.O. DIGARU
DIST.- KAMRUP
ASSAM.

7:SRI PRANGDAK LONGHANG
R/O- VILL.- DHORBAM
P.O. DHUPGURI
DIST.- KAMRUP
ASSAM.

8:SRI AJIT KHAKLARY
R/O- VILL.- KAMARKUCHI
P.O. TEPESIA
DIST.- KAMRUP
ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, WPT AND BC

Review Pet. Sl. No.9702/2020

AMRI KARBI DEVELOPMENTAL SOCIETY AND 2 ORS.

VERSUS

THE STATE OF ASAM AND 7 ORS. A

Advocate for : MR. K N CHOUDHURY
Advocate for : appearing for THE STATE OF ASAM AND 7 ORS. A

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

Date : 16-12-2020

JUDGEMENT & ORDER

The applicants in this case have projected extra-ordinary urgency, for which the matter had to be listed for hearing out of turn and accordingly, taken up today for consideration.

2. Two numbers of applications have been filed by the applicants, one for review of an order 01.11.2019 passed by this Court in WP(C) No.4630/2015 and the other seeking leave to review as the applicants were not party respondents in the aforesaid writ petition.

3. By the aforesaid order dated 01.11.2019, this Court had allowed the writ petition which was filed with the grievance of excluding six numbers of constituencies under the Tiwa Autonomous Council (TAC). The case projected in the writ petition is that out of 36 notified constituencies in the TAC, elections were not held for six constituencies in the year 2015.

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Though the writ petition was instituted in the year 2015 itself, the elections which was held in the said year, 2015 and also for the earlier term held in the year 2010 were without these six constituencies. It was contended that the notification holding the field having prescribed for 36 Constituencies, there was no reason not to hold the elections in six of its Constituencies merely on the ground of law and order. As per the law related to the Council, namely, the Tiwa Autonomous Council Act, 1995, Chapter VII casts an obligation on the State to hold the elections and Section 59 (2) of the Act specifically lays down an embargo against non-holding of elections. Reliance was put in the cases of Kishan Singh Tomar Vs. Municipal Corporation of the City of Ahmedabad, reported in (2006) 8 SCC 352 and also "The Matter of Special Reference No.1 of 2002 (Gujarat Assembly Election Matter), reported in 2002 8 SCC 237.

4. This Court after hearing the parties and taking into consideration, the Constitutional mandate for holding timely elections for various bodies had directed that elections to be held in the year 2020 has to include all the 36 numbers of constituencies.

5. It is this direction which has been sought to be reviewed by filing the review application along with a leave application.

6. I have heard Shri J Patowari, learned counsel for the applicants. I have also heard Shri G Pegu, learned State Counsel; Shri PN Goswami, learned counsel for the writ petitioner / opposite party; Shri S Neogi, learned counsel for the respondent-Council and Shri N Bora, learned Standing Counsel, Assam State Election Commission (ASEC).

7. For the sake of convenience and considering that the submissions would overlap, both the applications for leave and review petition are heard together.

8. Shri Patowari, learned counsel for the applicants submits that the applicants not being arrayed as party respondents in WP(C) No.4630/2015, they were not at all aware of the order dated 01.11.2019 passed by this Court and therefore, some delay has occurred in approaching this Court by the present applications. He contends that due to the said fact,

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they were deprived of the opportunity to place all the relevant facts of the case, including an order of the Hon'ble Division Bench on the subject and has further contended that if this Court was apprised of the same, perhaps, the order dated 01.11.2019 would not have been passed. Learned counsel has contended that the election notification was published only on 17.11.2020 and thereafter the present applications were filed on 05.12.2020 and therefore, there is no delay as such.

9. Coming to the merits of the case, Shri Patowari learned counsel has referred to the order dated 18.05.2016 passed by the Hon'ble Division Bench of this Court in PIL No.35/2015 instituted by the present applicants. The said PIL had challenged a notification dated 17.05.2005 whereby 36 numbers of Constituencies under the TAC was demarcated. It is the contention of the applicants that those 36 numbers of Constituencies included six numbers of constituencies which were illegally made part of the TAC as the population pattern did not meet the requirement of the statute. The said six constituencies are as follow: -

i) 26 No. Dimoria Constituency (ST),

ii) 32 No. Digaru Constituency (Open),

iii) 33 No. Khetri Constituency (Open Women),

iv) 34 No. Sonapur Constituency (Open),

v) 35 No. Ampri Constituency (Open), and

vi) 36 No. Phong-Ari Constituency (Open).

10. It is submitted that taking into account the projected case of the applicants, the Hon'ble Division Bench had disposed of the PIL by granting liberty to make appropriate representation before the Chief Secretary, Assam by ventilating their grievances which would accordingly be considered on merits. Further liberty was granted to the applicants to approach the Court in case of being aggrieved by such decision. It is the case of the applicants that accordingly a representation was submitted on 09.09.2016 to the Chief Secretary, Assam which was followed by an order dated 25.10.2017 whereby, with the prior approval of the Chief Minister of Assam, the matter was referred to the Group of Ministers

(GoM), who would examine the matter regarding inclusion or exclusion of the six Constituencies and give its recommendation for consideration by the Cabinet. The matter is accordingly under consideration and it is contended that if at this stage, the elections are held in the aforesaid six constituencies, grave prejudice would be caused to the entire inhabitants of the same. Shri Patowari specifically contends that in the writ petition, all these facts were suppressed and rather, it was pleaded that only because of certain law and order problems, the elections were said to be deferred for the six Constituencies and consequently abandoned.

11. Contending on the merits of the dispute, Shri Patowari has drawn the attention of this Court to the definition of "satellite area" and "core area" as appearing in Section 2 (q) and 2 (u) of the Act along with the population pattern given in the chart of different tribal communities in the six numbers of Constituencies in question and has contended that the percentage of Tiwa community is much less than the required percentage which is 50% and therefore, there was no justification at all to rope in the aforesaid six numbers of Constituencies to be a part of the TAC. He, accordingly, prays for grant of leave to file the review and also to allow the review on the grounds contended.

12. In support of his submissions, Shri Patowari has relied upon two orders, respectively dated 25.06.2007 (Division Bench) and 19.07.2007 (Full Bench) in PIL No.62/2007. In the said PIL, an election notification was stayed on the ground of non-finalization of a delimitation process in terms of the Census Rules of 1990 read with the Census Act, 1948. Reliance is also placed upon the case of Meghraj Kothari Vs. Delimitation Commission, reported in AIR 1967 SC 669. In that case, the Hon'ble Supreme Court had laid down that a process of delimitation is immune from judicial scrutiny.

13. *Per contra*, Shri PN Goswami, learned counsel for the contesting opposite parties / writ petitioners submits that the applicants have miserably failed to make out any case for review by following the spirit of Section 114 read with Order 47 of the Code of Civil Procedure. It is contended that no error, apparent on the face of the records has been able to

be pointed out and in fact, the order dated 01.11.2019 does not suffer from any error and is based on sound reasons and the mandate laid down by the Hon'ble Supreme Court in the cases referred to in the order. He further contends that the allegation of suppression of the order of the Hon'ble Division Bench is without any basis inasmuch, as there was no restraint order of the Hon'ble Division Bench and the direction of the Hon'ble Division Bench was being complied with which is an admitted case of the applicants. In fact, the learned counsel submits that from 25.10.2017 i.e., the date of passing of the order by the Chief Secretary, the applicants are sitting tight and it is on the verge of holding the elections that the present applications have been filed.

14. Shri Goswami, learned counsel further urges that the conduct of the applicants, on the contrary, is doubtful for more than one reason. The writ petition was disposed of by this Court on 01.11.2019 which was very much within the knowledge of all concerned, including the applicants as wide publicity was given to the said order. The applicants, if so aggrieved, should have approached this Court much earlier which they chose not to do and therefore, interest of justice and equity is not in their favour. Touching upon the merits of the case, Shri Goswami, learned counsel submits that wrong submissions have been made by the applicants by placing reliance upon the unamended Rules. The amended Rules treat at par all the Scheduled Tribes and not only Tiwa (Lalung). It is contended that the GoM is looking into the matter as per the order dated 25.10.2017 of the Chief Secretary, Assam and any order for stopping / staying the elections for the six Constituencies would amount to embarking upon the statutory mandate.

15. The learned counsel for the writ petitioners / opposite parties also places reliance upon Section 59 of the Act which lays down an embargo to call into question an election process except by way of an election petition before the designated authority. Rule 96 of the Tiwa Autonomous Council Rules, 2005 has also been pressed into service to buttress the aforesaid point.

16. In support of his submissions, Shri Goswami relies upon a recent decision of the

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Hon'ble Supreme Court dated 03.11.2020 passed in Civil Appeal No.3601/2020 [Shri Ram Sahu (Dead) through Lrs & Ors. Vs. Vinod Kumar Rawat & Ors.]. The Hon'ble Supreme Court has laid down the principles of review in the following manner: -

> "*7. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. In the case of Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844, this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.*
>
> *8. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in the case of T.C. Basappa vs. T. Nagappa, AIR 1954 SC 440. It is held that such an error is an error which is a patent error and not a mere wrong decision. In the case of Hari Vishnu Kamath vs. Ahmad Ishaque, AIR 1955 SC 233, it is observed as under:*
>
> "*It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clearcut rule by which the boundary between the two classes of errors could be demarcated."*
>
> *8.1 In the case of Parsion Devi vs. Sumitri Devi, (Supra) in paragraph 7 to 9 it is observed and held as under:*
> *7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P.,AIR 1964 SC 1372 this Court opined:*
>
> "*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*

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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 characterized as vitiated by 'error apparent'. Are view is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

"*8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury,(1995) 1 SCC 170 while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma (supra) this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule1 CPC.*

9. Under Order 47 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 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 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".

8.2 In the case of State of West Bengal and Others vs. Kamal Sengupta and Anr., (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be "mistake or error apparent on the face of record". In para 22 to 35 it is observed and held asunder:

"*22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an 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 or Section 22 (3) (f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law*

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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 court/tribunal concerned cannot sit in appeal over its judgment/decision.

23. We may now notice some of the judicial precedents in which Section 114 read with Order 47 Rule 1 CPC and/or Section 22 (3) (f) of the Act have been interpreted and limitations on the power of the civil court/tribunal to review its judgment/decision have been identified.

24. In Rajah Kotagiri Venkata Subbamma Rao v. Rajah Vellanki Venkatrama Rao (18991900) 27 IA 197 the Privy Council interpreted Sections 206 and 623 of the Civil Procedure Code and observed: (IA p.205)

"*... Section 623 enables any of the parties to apply for are view of any decree on the discovery of new and important matter and evidence, which was not within his knowledge, or could not be produced by him at the time the decree was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. It is not necessary to decide in this case whether the latter words should be confined to reasons strictly ejusdem generic with those enumerated, as was held in Roy Meghraj v. Beejoy Gobind Burral, ILR (1875) 1 Cal 197. In the opinion of Their Lordships, the ground of amendment must at any rate be something which existed at the date of the decree, and the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event."*
(emphasis added)

25. In Hari Sankar Pal v. Anath Nath Mitter, 1949 FCR 36 a five-Judge Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to nonappealing party, whose position was similar to that of the successful appellant, held: (FCR p.48)

"*That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within*

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the purview of Order 47 Rule 1, Civil Procedure Code."

26. In Moran Mar Basselios Catholicos v. Mar Poulose Athanasius (supra) this Court interpreted the provisions contained in the Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed:

"*32. ... Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.*

It may allow a review on three specified grounds, namely,(i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason.
It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, least analogous to those specified in the rule'."
27. In Thungabhadra Industries Ltd. v. Govt. of A.P.(supra) it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.
28. In Parsion Devi v. Sumitri Devi (Supra) it was held asunder: (SCC p. 716)

"*Under Order 47 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 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'."*
29. In Haridas Das v. Usha Rani Banik, (supra) this Court made a reference to the Explanation added to Order 47 by the Code of Civil Procedure (Amendment) Act, 1976 and held:

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"13. In order to appreciate the scope of a review, Section 114 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 47 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 to Rule 1 of Order 47 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."

30. In Aribam Tuleshwar Sharma v. Aribam PishakSharma (Supra) this Court considered the scope of the High Courts' power to review an order passed under Article 226 of the Constitution, referred to an earlier decision in Shivdeo Singh v. State of Punjab (Supra) and observed: (AribamTuleshwar case (Supra), SCC p. 390, para 3)

"3. ... It is true as observed by this Court in Shivdeo Singh v. State of Punjab (Supra), 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 or 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

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powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

31. In K. Ajit Babu v. Union of India, (1997) 6 SCC 473, it was held that even though Order 47 Rule 1 is strictly not applicable to the tribunals, the principles contained therein have to be extended to them, else there would be no limitation on the power of review and there would be no certainty or finality of a decision. A slightly different view was expressed in Gopabandhu Biswal v. Krishna Chandra Mohanty, (1998) 4 SCC 447). In that case it was held that the power of review granted to the tribunals is similar to the power of a civil court under Order 47 Rule 1.

32. In Ajit Kumar Rath v. State of Orissa, (1999) 9 SCC 596, this Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a civil court and held: (SCC p. 608, paras 3031)

"*30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule.*

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground setout in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

33. In State of Haryana v. M.P. Mohla, (2007) 1 SCC 457 this Court held as under: (SCC pp. 46566, para 27)

"*27. A review petition filed by the appellants herein was not maintainable. There was no error apparent on the face of the record. The effect of a judgment may have to be considered afresh in a separate proceeding having regard to the subsequent cause of action which might have arisen but the same*

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by itself may not be a ground for filing an application for review."

34. In Gopal Singh v. State Cadre Forest Officers' Assn., (2007) 9 SCC 369 this Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below: (SCC p. 387, para 40)

"40. The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Sinha, J.) that the Tribunal has travelled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

35. The principles which can be culled out from the above noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22 (3) (f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22 (3) (f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22 (3) (f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development

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cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such 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/tribunal earlier."

9. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.

10. Considered in the light of the aforesaid settled position, we find that the High Court has clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. No ground as envisaged under Order 47 Rule 1 CPC has been made out for the purpose of reviewing the observations made in para 20. It is required to be noted and as evident from para 20, the High Court made observations in para 20 with respect to possession of the plaintiffs on appreciation of evidence on record more particularly the deposition of the plaintiff (PW1) and his witness PW2 and on appreciation of the evidence, the High Court found that the plaintiff is in actual possession of the said house. Therefore, when the observation with respect to the possession of the plaintiff were made on appreciation of

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evidence/material on record, it cannot be said that there was an error apparent on the face of proceedings which were required to be reviewed in exercise of powers under Order 47 Rule 1 CPC. At this stage, it is required to be noted that even High Court while making observations in para 20 with respect to plaintiff in possession also took note of the fact that the defendant nos. 1 and 2 – respondents herein themselves filed an application being I.A. No.1267 of 2012 which was filed under Section 151 CPC for getting the possession of the disputed house from the appellants and the said application was dismissed as withdrawn. Therefore, the High Court took note of the fact that even according to the defendant nos. 1 & 2 the appellants were in possession of the disputed house. Therefore, in light of the fact situation, the High Court has clearly erred in deleting para 20 in exercise of powers under Order 47 Rule 1 CPC more particularly in the light of the settled preposition of law laid down by this Court in the aforesaid decisions.

12.Hence, on the grounds stated in the impugned order, the High Court in exercise of review jurisdiction could not have without sufficient and just reasons reviewed its own judgment and order and deleted the observations made in para 20 with respect to possession."

17. He also gathers support from the decision of the Hon'ble Supreme Court rendered in the case of Election Commission of India Vs. Ashok Kumar, reported in (2000) 8 SCC 216.

18. Shri Goswami, learned counsel accordingly prays for dismissal of both the applications as no case for review has been made out. He has also emphasized on the fact that the elections are scheduled to be held on 17.12.2020 and at this stage, if any interim order is passed, the entire process will go haywire which will be against the public interest.

19. Shri N Bora, learned Standing Counsel, Assam State Election Commission endorses the submissions of Shri Goswami and additionally, submits that in case, the review is allowed, that would be against the very object of having an absolute restriction in the statute and would hamper the smooth process of election. In support of his submissions, he places reliance upon an order dated 28.11.2018 passed by this Court in a bunch of writ petition,

including WP(C) No.8065/2018 (Lila Sarma & Ors. Vs. State of Assam and Ors.), in which this Court has laid down the restrictions in interfering with matters connected with elections. Reliance upon a recent order dated 08.12.2020 of this Court passed in WP(C) No.5014/2020 has been placed which has recorded the restrictions imposed by the statute in matters pertaining to elections of the Bodoland Territorial Council and refused to entertain a challenge made in a writ petition. It is considered that the provision of the Acts regarding elections are *pari-materia*.

20. Shri G Pegu, learned State Counsel and Shri S Neogi, learned Standing Counsel, TAC were also heard, who opposed the applicants and prayed for dismissal of the applications.

21. The rival contentions of the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

22. It is a fact that the applicants were not parties in WP(C) No.4630/2015 and therefore, the question of affording them an opportunity of hearing before the writ petition was disposed of did not arise. Though the contention made on behalf of the writ petitioners that the applicants were sitting on the fence and watching the proceedings as the writ petition was pending since more than four years may be correct, this Court is of the opinion that any order to non-suit the applicants would not be in the interest of justice. Accordingly, leave to file the review is granted and the IA(C) No.2143/2020 is allowed.

23. Let us now examine as to whether the applicants have been able to make out a case for review of the order dated 01.11.2019 and as to whether the applicants have been able to meet the rigours of the spirit of Section 114 read with Order 47 of the Code of Civil Procedure, 1908. It has not been able to be contended or demonstrated that the aforesaid order suffers from error apparent on the face of the records which is one of the condition precedent for review. As regards the other grounds of the statute, the submissions made regarding suppression of the order of the Hon'ble Division Bench dated 18.05.2016 has to be examined in the context of the subject. Though the order of the Hon'ble Division Bench was

not brought to the notice of this Court, a reading of the same would lead to a conclusion that the said cannot be concluded to be a **suppression of material facts**. In other words, the analysis has to be done from the point of view as to whether the order of this Court would have been substantially different if the order of the Hon'ble Division Bench was brought to its notice. In the opinion of this Court, the order dated 01.11.2019 of this Court is not at all contrary to any direction of the Hon'ble Division Bench. Further, though the order of this Court is more than a year old, no steps were taken by the applicants to prefer an appeal if they were so aggrieved. It is also a matter of fact that the writ petition was decided after more than four years and keeping into consideration the activities of the applicant society, it cannot be said with certainty that they were not aware of the proceedings in this Court. In this regard, the pleadings made in paragraphs 1 and 2 of the review petition may be taken into consideration, who claims to be spearheading the cause of the Karbi community. This Court is also conscious of the fact that said order was passed after hearing not only the writ petitioners but also the State of Assam, the Standing Counsel of the TAC and the State Election Commission. Further, though the election notification was published on 17.11.2020, the exercise of preparation of the same definitely has to be from a much prior date and the present applications have been filed on 05.12.2020 and moved on 10.12.2020 just a week before the date of the elections.

24. This Court is also of the opinion that there is nothing inconsistency of the order of this Court with the consequence of the Hon'ble Division Bench order in terms of which the GoM is looking into the matter. Even assuming that the decision of the GoM would be in favour of the applicants, that cannot be a reason to stall the elections for six numbers of Constituencies. This Court has also taken into account that the PIL which was instituted on behalf of the applicants which culminated with the order dated 18.05.2016 has been accepted by the applicants and no further challenge was made. No attempt has also been able to be demonstrated towards expediting the process pursuant to the direction of the Hon'ble Division Bench and the order dated 25.10.2017 passed by the Chief Secretary of the State. Therefore, even without going into the aspect of legal bar regarding challenge made to an election process, this Court is of the opinion that no grounds whatsoever has been able to be

made out for exercising the power of review in respect of the order dated 01.11.2019. This Court has also noticed that the legal requirement under the Gauhati High Court Rules of certifying the grounds as good grounds of review has not been done but the rejection of this application is not on that technical ground.

25. In view of the above, while allowing the application seeking leave to file review, the application for review of the order dated 01.11.2019 passed by this Court in WP(C) No.4630/2015 is dismissed. No order as to costs.

JUDGE

Comparing Assistant

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