Green View Tea And Industries vs Collector, Golaghat, Assam And Anr. on 17 February, 2004

Equivalent citations: AIR2004SC1738, 2004(2)AWC1723(SC), 98(2004)CLT157(SC), [2004(2)JCR124(SC)], JT2004(2)SC556, 2004(2)SCALE547, (2004)4SCC122, AIR 2004 SUPREME COURT 1738, 2004 AIR SCW 1347, 2004 (2) SCALE 547, 2004 (1) LRI 862, 2004 (4) SCC 122, 2004 (2) ALL CJ 1440, 2004 (2) SLT 244, (2004) 2 JT 556 (SC), (2004) 1 CLR 519 (SC), (2004) 2 JCR 124 (SC), 2004 ALL CJ 2 1440, (2004) 15 INDLD 515, (2004) 2 RECCIVR 620, (2004) 2 ICC 656, (2004) 2 SCALE 547, (2004) 2 WLC(SC)CVL 117, (2004) 3 LANDLR 152, (2004) 2 SUPREME 584, (2004) 2 ALL WC 1723, (2004) 3 CIVLJ 103, (2004) 2 CURCC 66, (2004) 98 CUT LT 157, (2004) 1 LACC 302, (2003) 4 JLJR 515, (2004) 1 JCR 605 (JHA)

Author: B.N. Srikrishna

Bench: K.G. Balakrishnan, B.N. Srikrishna

JUDGMENT

B.N. Srikrishna, J.

1. This is an appeal by special leave against the judgment of the Guwahati High Court dated 25.8.1999 dismissing a review application taken out by the appellant.

2. At the outset, by I.A. No. 3 of 2003, the respondents sought revocation of the special leave granted in the civil appeal on the ground that it is barred by res judicata or principles analogous thereto. It would be necessary to appreciate the facts in order to evaluate this preliminary objection.

3. The appellant is a partnership firm, which owns a tea estate known as Rajabari Tea Estate situated in the District of Golaghat, Assam. Its business consists of running the tea estate and the production and sale of tea. The tea estate owned by the appellant was about 1800 bighas [1 bigha is approximately 14,400 sq. feet or about 1/3rd of an acre] and employed about 170 workmen and other staff required for the management of the estate. It also had a tea-manufacturing establishment on its premises.

4. A large portion of the tea estate was intended to be acquired by the Government of Assam for the construction of the an oil refinery. On 17th August 1992, the State Government sent a proposal to

the Collector, Golaghat for the acquisition of the required area of land for the construction of the Numaligarh Oil Refinery. The proposal was for acquisition of 681 bighas and 1 katha along with tea bushes, drainage system, garden, roads, sheds and the trees standing on the land. Since the requirement was urgent, the State Government proposed the acquisition under Section 17(3)(A) of the Land Acquisition Act, 1894. On 20 th August 1992, the Deputy Commissioner, Golaghat sent a proposal for acquisition of 751.30 acres of Government land and Patta land for the Numaligarh Oil Refinery Plant site. He requested the Government to approve of the uniform bigha rate of Rs. 55,000/- irrespective of class, for both Government and patta land.

5. By the letter dated 10 th September 1992, the Addl. Secretary to the State Government conveyed the approval of the Government for the proposal for the fixation of uniform rate of Rs. 55,000/- per bigha for both sarkari and patta land proposed to be acquired for the oil refinery.

6. By a letter dated 7.8.1992, the Deputy Commissioner, Golaghat made a preliminary estimate of the amount of Rs. 5,96,42,853/- for payment as compensation and requested that this amount be placed at the disposal of the Collector, Golaghat.

7. On 4th November 1992, a notification under Section 4 of the Land Acquisition Act, 1894 was published in the Official Gazette.

8. On 25th February 1993, a meeting was held with the Chief Minister, the Revenue Minister and top officials of the State Government including the Chief Secretary and Secretaries of other concerned Departments. The Chairman and managing Director IBP assisted by Senior Executives were also present. In the meeting it was decided that for patta land the compensation payable should not exceed Rs. 55,000/- per bigha (all inclusive). The Addl. Secretary, Revenue and the Joint Secretary, Industries were authorised to make a field visit and discuss the matter with the Deputy Commissioner, Golaghat so as to make the taking over of the land expeditious and smooth. It was decided that if this team arrived at a decision to pay Rs. 55,000/- per bigha , then the Deputy Commissioner would complete formal proceedings and the compensation would be paid through the Deputy Commissioner. In case the negotiations could not arrive at Rs. 55,000/- per bigha (all inclusive), then in that case the land acquisition proceedings would continue. In respect of Government land, it was decided that the premium would be fixed at Rs. 35,000/- per bigha . Certain other details of the transaction were also decided therein, which are not material at this stage.

9. While the State Government had decided that it would go up to Rs. 55,000/- per bigha for patta land and Rs. 35,000/- per bigha for Government land, the appellant was not agreeable to the same and insisted that higher rates be paid for the acquisition of its land. Consequently, on 2.4.1993, the Government issued directions cancelling the proposal of payment of Rs. 55,000/- per bigha and directed the Collector that compensation had to be fixed at Rs. 7,000/- per bigha . The petitioner received, under protest, advance payment of 80% of the compensation that was fixed and handed over possession of its land.

10. The petitioner thereafter filed a petition before the Collector for enhancement of compensation, which was numbered as L.A. No. 1/92-93. On 4 th July 1994, an award was declared awarding certain amount as compensation. Being dissatisfied with the amount of compensation, the petitioner sought a reference under Section 18 of the Land Acquisition Act, 1894. The District Judge, Golaghat by his judgment dated 18.11.1996, increased the compensation payable to Rs. 22,000/- per bigha and Rs. 75/- for each tea bush.

11. The petitioner filed First Appeal No. 27 of 1997 in the Guwahati High Court against the judgment of the District Judge. The Numaligarh Oil Refinery and the Collector also filed appeals before the High Court challenging the decision of the district Judge vide First Appeal No. 32 of 1997 and First Appeal No. 33 of 1997. By a common judgment dated 24th June 1998, the High Court dismissed the appeal of the petitioner being F.A. No. 27 of 1997 and allowed the appeals of the Collector and the Numaligarh Oil Refinery. On 29.7.1998, the petitioner filed a review petition being Review Application No. 54 of 1998 in the judgment dated 24.6.1998. On 16th October 1998, the petitioner also filed a special leave petition before this Court challenging the judgment of the High Court. On 4.2.1999, the High Court adjourned the hearing of the review application during the pendency of the special leave petition. On 8.3.1999, the petitioner's special leave petitions being SLP(C) Nos. 18020-22 of 1998 were withdrawn. On 25.8.1999, the High Court dismissed the Review Application No. 54 of 1998 taking the view that there was no error apparent on the face of the record in the judgment of the High Court dated 24.6.1998. On 26.10.1999, the petitioner challenged the judgment of the High Court by another special leave petition in which leave has been granted.

12. The learned Addl. Solicitor General contended that, in view of the fact that the special leave petition against the substantive judgment of the High Court dated 24.6.1998 was dismissed as withdrawn, there was no question of entertaining a review application in respect of the said judgment and sought revocation of the leave granted. In our view, this contention is misconceived. In K. Rajamouli v. A.V.K.N. Swamy, , this Court was concerned with the same issue. It was held at p. 41 (para 4):

> "The dismissal of the special leave petition against the main judgment of the High Court would not constitute res judicata when a special leave petition is filed against the order passed in the review petition provided the review petition was filed prior to filing of special leave petition against the main judgment of the High Court. The position would be different where after dismissal of the special leave petition against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting (sic) remedy by way of special leave petition. In such a situation the filing of review would be an abuse of the process of the law. "

(Emphasis supplied)

13. This judgment squarely applies to the fact before us. The review petition in the instant case was filed on 29.7.1998, while the special leave petition against the main judgment of the High Court was itself filed on 16.10.1998. It was in these circumstances that this Court was persuaded to grant leave in the matter. We see no substance in the contention urged as to the non-maintainability of the

appeal.

14. Turning to the merits of the matter, it appears to us that the High Court has declined the review application by taking the view that there was no error apparent on the face of the record and that the considerations enumerated in Order 47, Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') were absent in the case. The learned Addl. Solicitor General contends that, whatever the grievance of the appellant against the judgment of the High Court dated 24.6.1998, it could not have been brought before the High Court by way of a review. He urges that the court's power of reviewing a judgment, under Order 47 Rule 1 of the CPC is extremely limited. He referred to the observations of this Court in Parsion Devi and Ors. v. Sumitri Devi and Ors. , , and has contended that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be an 'error apparent on the face of the record' justifying the court's exercise of its power of review under Order 47 Rule 1 CPC. He urges that, in exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected" since a review petition has a limited purpose and cannot allowed to become "an appeal in disguise". After having perused the record, we are satisfied that there are mistakes apparent on the face of the record and it is a fit case for review for the reasons that follow.

15. Before we look at the facts of the case, we wish to emphasise the approach to be adopted by the court while administering justice. This Court in S. Nagaraj and Ors. v. State of Karnataka and Ors., 1993 Supp. (4) SCC 595, at p. 630 (para 36) observed:

> "It is the duty of the court to rectify, revise and re-call its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of facts and that implementation of those orders would have serious consequences. An act of Court should prejudice none. "Of all these things respecting which learned men dispute", said Cicero, "there is none more important than clearly to understand that we are born for justice and that right is founded not in opinion but in nature". This very idea was echoed by James Madison (The Federalist, No. 51 at p. 352). He said:
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> "Justice is the end of the government. It is the end of the civil society. It ever has been and ever will be pursued, until it be obtained or until liberty be lost in the pursuit."

16. Keeping this wholesome principle in view, we shall now approach the case to discern whether the High Court's judgment dismissing the review petition is sustainable.

17. The first thing that strikes us is that when the proposal of acquisition of land was mooted, the Deputy Commissioner himself was of the view that the compensation payable should be at the rate of Rs. 55,000/- per bigha . The State Government considered this and then agreed to the same. Ultimately, this compensation would have to be paid by the beneficiary of the land acquisition, namely the oil refinery.

18. Secondly, the appellant had placed on record the awards made in the case of other similarly situated tea estates nearby showing that in each of these cases, the Government had directed compensation at the rate of Rs. 55,000/- per bigha .

19. Thirdly, an order of the State Government issued by the Collector and Deputy Commissioner, Tinsukia dated 4th August 1992 and an order of the District Collector and Deputy Commissioner, Dibrugarh were placed on record, which indicate land value of different categories. They are as under:-

1. Highly developed commercial places Rs. 2,00,000/- per bigha within notified area

2. Urban area (the recognised towns Rs. 1,20,000/- per bigha within notified area)

3. Semi-urban area (the area beyond the Rs. 1,20,000/- per bigha notified area but within two miles radius of the town either revenue or municipal town)

4. Rural area viz. paddy field and tea Rs. 60,000/- per bigha cultivation area

5. Land unfit for cultivation viz. rocky Rs. 40,000/- per bigha areas, sandy areas,jaldube areas etc.

20. Thus, it would be seen that even according to the State Government, if the land was unfit for cultivation and comprised only rocky areas, sandy areas or jaldube areas, the amount of compensation payable was at the rate of Rs. 40,000/- per bigha . As against this, the Collector was directed to fix the compensation at the rate of Rs. 7,000/- per bigha and the District Judge enhanced it to Rs. 22,000/- per bigha . Surely, the tea estate land was much more valuable than "land unfit for cultivation". It is nobody's case that the tea estate's land was uncultivated or that there were no tea bushes growing thereupon.

21. Fourthly, the oral evidence on record showed that, at all stages, the Government was prepared to pay Rs. 55,000/- per bigha and it was only the appellant who had taken a rigid stand demanding a higher price.

22. Fifthly, Exhibits 6, 7 & 8 placed on record prima facie seem to be similar cases of acquisition of land in Sibsagar District, wherein for arable land the estimate of compensation payable made by the Government itself was Rs. 55,000/- per bigha . Exhibit 8 was the case of acquisition of tea class land, which also showed the compensation payable at the same rate as the Government had initially agreed to pay.

23. Sixthly, even if the High Court disagreed with the valuation of tea bushes made by the District Judge, being the Court of First Appeal, it would have had to itself fix the compensation for the tea bushes. This, the High Court failed to do. All this on record appears to have escaped the notice of the High Court.

24. Unfortunately, the High court while considering the question of initial compensation amount fixed by the State Government as Rs. 55,000/- per bigha , has treated it as an issue of promissory estoppel and has held against the appellant. Irrespective of whether it is a situation of promissory estoppel or not, the fact that the State Government itself had accepted Rs. 55,000/- per bigha of tea class land as appropriate compensation ought to have been a factor which would have influenced the fixing the compensation for the land. The letter written by the Deputy Commissioner referring to an earlier order dated 20th June 1990, fixing category-wise valuation of different categories of land was just brushed aside on the ground that it did not amount to evidence under Section 3 of the Indian Evidence Act, 1872. Having lost sight of the material on record, the High Court concluded, "there is no material available on record to hold that the land in question falls within a rural area with paddy field and tea cultivation area", which is directly contrary to the Jamabandhi report, which classified the land as 'tea class land'.

25. The cumulative effect of all this evidence is that, we are satisfied that the High Court in fairness and in the interest of justice, ought to have given a second look to its own judgment dated 24.6.1998.

26. We had suggested to the parties that, if they both consent, we would decide the mater here itself and thereby two possible further rounds of litigation could be avoided. While Mr. Shanti Bhushan, learned Senior Counsel for the appellant was prepared for this, the learned Addl. Solicitor General declined to accept this suggestion. Hence, despite our being satisfied that the appellant had a case for review, we refrain from deciding what relief, if any, should be granted on such review, and leave it to the judgment of the High Court.

27. In the result, we allow the appeal, set aside the judgment of the High Court under appeal and remit the Review Application No. 54 of 1998 to the High Court for hearing and disposal, in accordance with law. In view of the long delay, it is expected that the High Court would expedite the hearing and disposal of the application.

28. I.A. No. 3 of 2003 is dismissed. No order as to costs.