

ASHARFI DEVI (D) THR. LRS.

A

v.

STATE OF U.P. & ORS.

(Civil Appeal No. 5217 of 2010)

B

FEBRUARY 01, 2019

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Constitution of India – Art. 142 – Powers under – Invocation of – Ceiling proceedings challenged in a writ petition – Dismissed by the High Court – Review application also dismissed – Appeal only against the review order, wherein appellants seeking to challenge the legality of main order – Held: The instant appeal does not arise out of the main order passed in the writ petition but arises out of review order only and, thus, the legality and correctness of the main order cannot be examined in this appeal like an appellate court – There was no legal impediment on the appellants' right to file the SLP in Supreme Court as soon as the main order was passed – When the present SLP was filed in the year 2010 against the review order, the original appellant again did not challenge the main order – Thus, no ground to invoke extraordinary powers u/Art. 142 and permit the appellants to question the legality of main order in this appeal – Urban Land (Ceiling and Regulation) Act, 1976.

C

D

E

F

G

Code of Civil Procedure, 1908 – Or. XLVII, r. 1 – Review order – Legality of – Held: Every error whether factual or legal cannot be made subject matter of review u/Or. XLVII, r. 1 though it can be made subject matter of appeal arising out of such order – In order to attract the provisions of Or. XLVII, r. 1, the error/mistake must be apparent on the face of the record of the case – On facts, review order was passed in conformity with the requirements of Or. XLVII, r. 1 and, thus, the High Court rightly concluded that the main order impugned in the review application did not contain any factual or/ and legal error within the meaning of Or. XLVII, so as to entitle the review Court to recall the same in its review jurisdiction – Once the finding was recorded by the High Court in the Writ petition that the writ petitioner failed to prove her case, such finding could not have

H

- A *been examined de novo in review jurisdiction by the same Court like an appellate court on the facts and evidence – Reasoning and conclusion arrived at by the High Court (Review Court) in the impugned order is concurred with.*

Dismissing the appeal, the Court

- B **HELD:** 1.1 The original appellant (writ petitioner) never challenged the legality and correctness of the main order passed in the writ petition but confined her challenge only to the order passed in the review application. Though counsel for the appellant contended that reading of the list of dates in this appeal shows
- C that the original appellant has challenged the main order also along with the review order, but it is not found so. The original appellant not having challenged the legality of the main order in a separate SLP or in this appeal, this Court is not called upon to examine the legality and correctness of the main order dated 14.03.2008 in the present appeal. [Paras 9, 10 and 11][859-C-E]
- D 1.2 The original appellant did not assign any reason as to what prevented her in the last almost 11 years in not filing the SLP against the main order. There was no legal impediment on the appellants' right to file the SLP in this Court as soon as the main order was passed and when the present SLP was filed in the year 2010 against the review order, the original appellant again did not challenge the main order. In view thereof, there is no good ground to invoke extraordinary powers under Article 142 of the Constitution and permit the appellants (legal representatives of original appellant) to question the legality of main order in this appeal. [Paras 13-15][859-F-H; 860-A-B]
- E 1.3 While examining the legality of the review order, the legality of main order cannot be examined on its merits because, this appeal does not arise out of the main order. Therefore, inquiry is to be confined with a view to find out whether the review order is legally sustainable or not. [Para 18][860-C-D]
- F 1.4 It is a settled law that every error whether factual or legal cannot be made subject matter of review under Order XLVII Rule 1 of the Code though it can be made subject matter of appeal arising out of such order. In other words, in order to attract the provisions of Order XLVII Rule 1 of the Code, the error/mistake
- H

must be apparent on the face of the record of the case. [Para A 21][860-F-G]

1.5 On perusal of the main order, it is found that the High Court dismissed the writ petition holding that the writ petitioner (original appellant) failed to prove her possession over the land in question on the date of repeal. It was held that the State had taken possession of the land in the year 1982 as per the panchnama prepared by the State. In review, the High Court held that while recording the said finding in the main order, no apparent error, whether on facts or law within the meaning of Order XLVII Rule 1 of the Code, was committed attracting the rigor of Order XLVII Rule 1 of the Code. [Paras 19, 20][860-D-F]

1.6 This appeal does not arise out of the main order but arises out of review order only and, therefore, the legality and correctness of the main order cannot be examined in this appeal like an Appellate Court. The matter is examined only with a view to find out as to whether the High Court was right in dismissing the review application and thereby justified in upholding the main order holding that it did not contain any error/mistake apparent on the face of the record. In other words, the issue was examined only with a view to find out as to whether the review order, which is subject matter of this appeal, was passed in conformity with the requirements of Order XLVII Rule 1 of the Code or not. Having examined, the review order was passed in conformity with the requirements of Order XLVII Rule 1 of the Code and, therefore, the High Court rightly concluded that the main order impugned in the review application did not contain any factual or/and legal error(s) within the meaning of Order XLVII of the Code so as to entitle the review Court to recall the same in its review jurisdiction. And lastly, once the finding was recorded by the High Court in the writ petition that the writ petitioner (original appellant) failed to prove her actual possession on the land in question on the date of repeal, such finding could not have been examined *de novo* in review jurisdiction by the same Court like an Appellate Court on the facts and evidence. The reasoning and the conclusion arrived at by the High Court (Review Court) in the impugned order is concurred with. [Paras 23-28][861-A-F]

B

C

D

E

F

G

H

- A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5217 of 2010.

From the Judgment and Order dated 16.12.2008 of the High Court of Judicature at Allahabad U.P. in Civil Misc. Review Application No. 81507 of 2008 in Civil Misc. Writ Petition No. 10557 of 2002.

- B Jayant Bhushan, Sr. Adv., Bharat Bhushan, Tushar Bhushan, Advs. for the appellants.

Dr. M.P. Raju, John Thomas, P. George Giri, Ms. Jasmin Kurian, T.N. Singh, Rajeev Kr. Dubey, Kamlendra Mishra, Bhakti Vardhan Singh, Sanjay Kumar Visen, Navin Gupta, Ms. Sasmita Tripathy, Ms. Ritu

- C Rastogi, Advs. for the respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is directed

against the final judgment and order dated 16.12.2008 passed by the High Court of Judicature at Allahabad in Civil Misc. Review Application

- D No.81507 of 2008 in Civil Misc. Writ Petition No.10557 of 2002 whereby the High Court dismissed the Civil Misc. Review Application filed by the original appellant herein.

2. In order to appreciate the short controversy involved in this appeal, few facts need mention *infra*.

- E 3. The appellants herein are the legal representatives of the original appellant, who was the writ petitioner and the review petitioner whereas the respondents herein were the respondents in the writ petition and the review application.

4. The original appellant was the owner of certain lands. These

- F lands were subjected to ceiling proceedings under the Urban Land (Ceiling and Regulation) Act, 1976. The ceiling proceedings eventually resulted in declaring some lands in excess of ceiling limits as surplus. The State claims to have taken possession of the surplus land way back in the year 1982. The Ceiling Act was repealed for the State of UP on 22.03.1999.

- G 5. In the year 2002, the original appellant filed a writ petition against the respondents-State of UP and its authorities in the Allahabad High Court claiming therein that since the original appellant continued to remain in possession of the surplus land even after the Repeal Act came into force, all the ceiling proceedings against her in relation to the lands in question stood lapsed in terms of Repeal Act.

- H

6. This writ petition was dismissed by order dated 14.03.2008. A
The original appellant (writ petitioner) felt aggrieved by the dismissal of
her writ petition and filed Review Application No.81507/2008 in the High
Court. By impugned order dated 16.12.2008, the High Court dismissed
the review application.

7. The original appellant felt aggrieved and filed the present appeal B
by way of special leave against the review order dated 16.12.2008 in
this Court.

8. Heard Mr. Jayant Bhushan, learned senior counsel for the
appellants and Dr. M.P. Raju, learned counsel for the respondents.

9. It is clear from the record that the original appellant (writ C
petitioner) never challenged the legality and correctness of the main
order dated 14.03.2008 passed in the writ petition (10557/2002) but
confined her challenge only to the order dated 16.12.2008 passed in the
review application.

10. Though, learned counsel for the appellant contended that D
reading of the list of dates in this appeal shows that the original appellant
has challenged the main order dated 14.03.2008 also along with the review
order dated 16.12.2008, but we do not find it to be so.

11. In our opinion, the original appellant not having challenged the E
legality of the main order dated 14.03.2008 in a separate SLP or in this
appeal, this Court is not called upon to examine the legality and
correctness of the main order dated 14.03.2008 in the present appeal.

12. Mr. Jayant Bhushan, learned senior counsel for the appellants, F
however, argued that this Court should invoke the powers under Article
142 of the Constitution and permit the appellants to challenge the main
order. We find no merit in this submission for three reasons.

13. First, the original appellant did not assign any reason as to G
what prevented her in the last almost 11 years in not filing the SLP
against the main order;

14. Second, there was no legal impediment on the appellants' right
to file the SLP in this Court as soon as the main order dated 14.03.2008
was passed and lastly, when the present SLP was filed in the year 2010
against the review order, the original appellant again did not challenge
the main order dated 14.03.2008.

- A 15. In the light of these three reasons, we find no good ground to invoke extraordinary powers under Article 142 of the Constitution and permit the appellants (legal representatives of original appellant) to question the legality of main order dated 14.03.2008 in this appeal.
- B 16. Now coming to the merits of the case, we have to only examine the question as to whether the High Court was right in dismissing the review application filed by the original appellant holding that there was no error apparent on the face of the main order dated 14.03.2008 within the meaning of Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”).
- C 17. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal.
- D 18. While examining the legality of the review order, we cannot examine the legality of main order dated 14.03.2008 on its merits because, as mentioned above, this appeal does not arise out of the main order. Therefore, we have to confine our inquiry with a view to find out whether the review order is legally sustainable or not.
- E 19. On perusal of the main order dated 14.03.2008, we find that the High Court dismissed the writ petition holding that the writ petitioner (original appellant herein) failed to prove her possession over the land in question on the date of repeal. It was held that the State had taken possession of the land in the year 1982 as per the panchnama prepared by the State.
- F 20. In review, the High Court held that while recording the aforementioned finding in the main order, no apparent error, whether on facts or law within the meaning of Order 47 Rule 1 of the Code, was committed attracting the rigor of Order 47 Rule 1 of the Code.
- G 21. It is a settled law that every error whether factual or legal cannot be made subject matter of review under Order 47 Rule 1 of the Code though it can be made subject matter of appeal arising out of such order. In other words, in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case.
- H 22. Learned counsel for the appellants then argued the appeal as if this appeal arises out of the main order dated 14.03.2008. He extensively referred to the pleadings and several documents as if we are called upon to examine the legality of the main order itself.

23. We find no merit in any of his submissions for more than one reason. First, as mentioned above, this appeal does not arise out of the main order but arises out of review order only and, therefore, we cannot examine the legality and correctness of the main order in this appeal like an Appellate Court. A

24. Second, we examined the matter only with a view to find out as to whether the High Court was right in dismissing the review application and thereby justified in upholding the main order dated 14.03.2008 holding that it did not contain any error/mistake apparent on the face of the record. B

25. In other words, we examined the issue only with a view to find out as to whether the review order, which is subject matter of this appeal, was passed in conformity with the requirements of Order 47 Rule 1 of the Code or not. C

26. Third, having examined, we are of the view that the review order was passed in conformity with the requirements of Order 47 Rule 1 of the Code and, therefore, the High Court rightly concluded that the main order impugned in the review application did not contain any factual or/and legal error(s) within the meaning of Order 47 of the Code so as to entitle the review Court to recall the same in its review jurisdiction. D

27. And lastly, once the finding was recorded by the High Court in the writ petition that the writ petitioner (original appellant) failed to prove her actual possession on the land in question on the date of repeal, such finding could not have been examined *de novo* in review jurisdiction by the same Court like an Appellate Court on the facts and evidence. E

28. In view of the foregoing discussion, we concur with the reasoning and the conclusion arrived at by the High Court (Review Court) in the impugned order and find no merit in this appeal. F

29. The appeal thus fails and is accordingly dismissed.

G

Nidhi Jain

Appeal dismissed.