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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 31st OF JANUARY, 2024

REVIEW PETITION No. 1705 of 2018

BETWEEN:-

SADASHIV JOSHI

.....PETITIONER

*(SHRI SUNIL JAIN - SENIOR ADVOCATE WITH
SHRI ROMESH DAVE- ADVOCATE)*

AND

1. THE STATE OF MADHYA PRADESH COLLECTOR
INDORE (MADHYA PRADESH)
2. LAND ACQUISITION OFFICER, INDORE (MADHYA
PRADESH)
3. CHIEF EXECUTIVE OFFICER INDORE
DEVELOPMENT AUTHORITY 7, RACE COURSE
ROAD, INDORE (MADHYA PRADESH)

.....RESPONDENTS

*(MS.ARCHANA KHER - ADDITIONAL ADVOCATE GENERAL FOR
RESPONDENT NO.1 AND MS.MINI RAVINDRAN - ADVOCATE FOR
RESPONDENT NO.2 AND 3)*

.....
*This petition coming on for orders this day, Hon'ble Shri Justice Vijay
Kumar Shukla passed the following:*

ORDER

The present review petition is filed seeking review of the order dated

23.07.2017 passed in WA No.237 of 2008 and also order dated 04.05.2018 passed in Review Petition No.287 of 2017.

2. The present review petition has been filed in the light of the order passed in SLP (civil) No.28450 of 2018 decided on 28.09.2018.

3. Learned counsel for the respondent raises a preliminary objection that the second review is not maintainable. The petitioner has already exhausted remedy of writ petition which was dismissed and thereafter he filed writ appeal which was also dismissed and thereafter he was unsuccessfully challenged the said order in the writ appeal and in review petition. The Apex Court has not granted any liberty to the petitioner to file review petition before the Court.

4. Before advertng to the aforesaid objection, it would be apposite to refer the facts of the case that the petitioner was owner of land measuring 16.276 hectares in village Kharajana Tehsil and District Indore. A Town improvement scheme under the then Town Improvement Trust Act, 1960 was floated known as Scheme No.53 for the city of Indore. On enactment of Madhya Pradesh Nagar Tatha Gram Nivesh Ahiniyam, 1973 (hereinafter referred to as the Adhiniyan) the provisions of erstwhile Town Improvement Trust Act, 1960 stood repealed and the then Indore Improvement Trust was dissolved and Indore Development Authority under the Adhiniyam was constituted. The aforesaid Scheme was adopted and taken for implementation by Indore Development Authority (IDA). The aforesaid land of the petitioner measuring 16.276 hectares was included in the said Scheme and was sought to be acquired for the purposes of execution of the Scheme.

5. The petitioner, Sadashiv Joshi, along with many other land owners, whose land were also included, approached this Court through various writ petitions. A challenge was made to the Scheme as well as to the consequential acquisition

of their lands. The writ petition filed by the petitioner Sadashiv Joshi was numbered as MP No.244 of 1987 and was filed by him on 19.02.1987.

6. During pendency of the said writ petition, an application being IA No.5002 of 1992 was filed petitioner Sadashiv on 24.10.1992 with a prayer that he wanted to relinquish his rights in the writ petition with regard to the land, the details whereof were given in paragraph No.2 of the application, and a prayer was made to amend his claim in the writ petition, by deleting the prayer qua the aforesaid land, as detailed in the application.

7. On 05.10.1996, writ petition being MP No.244 of 1987 filed by the petitioner was allowed. It was noticed by the learned Writ Court that the procedure as laid down in law under the Adhiniyam had not been followed by Indore Development Authority, and therefore, the Scheme in question and consequential acquisition of the land of the writ petitioner was quashed.

8. A Letter Patent Appeal No.45 of 1997 along with other Letter Patent Appeals against the judgment of the learned Single Judge, was also dismissed by a Division Bench of this Court vide judgment dated 30.04.1998.

9. After the matter had attained finality on dismissal of letters patent appeal filed by the Indore Development Authority, the petitioner had again approached this Court through Writ Petition No.1578 of 2001 with the allegation that after the judgments of the learned Single Judge and the Division Bench, Indore Development Authority was not implementing the said judgments and therefore, directions were sought to comply with the said judgments. However, in the said writ petition, it was never disclosed by the petitioner that a substantial part of the claim, out of the total land holding of the petitioner had already given up by him during course of earlier writ petition (MP No.244 of 1987).

10. From paragraph No.3 of Writ Petition No.1578 of 2001, it is very clear and specific that the petitioner had relinquished his right in respect of the area which was deleted in pursuance to order date 01.12.1992 passed in MP No.244 of 1987, and therefore, he claimed relief in respect of area 9.363 hectares. [total land 16.276 hectares, Relinquished land 8.729 hectares and remaining land 7.547 hectares]. Paragraph No.3 of the writ petition reads, as under:

“3. Particulars of impugned orders / actions: - Non compliance of judgment and order dated 05.10.1996 in MP No.244 of 1987 and order dated 30.04.1998 in LPA No.45 of 1998 passed by the Hon'ble Writ Court and Hon'ble Division Bench of this Hon'ble Court.”

11. Writ petition was dismissed holding that filing of the said petition was nothing but a misconceived petition.

12. After dismissal of writ petition, the petitioner without disclosing order dated 07.11.2001 passed in Writ Petition No.1578 of 2001, filed Writ Petition No.755 of 2003 and prayed for the following relief:

“In the facts and circumstances of the case, petitioner most respectfully prays that this Hon'ble Court may kindly be pleased to: - जयते

Issue appropriate writ, orders or directions mandating respondent to revoke / cancel award dated 05.05.1994 in compliance to order dated 15.10.1996 and 30.04.1998 passed in MP No.244/1987 and LPA No.45/1998.

Issue appropriate directions or orders mandating the respondents to decide the application dated 2/3.05.2002 at an early date.

Any other and further orders as may be deemed fit in favour of the petitioner in the facts and circumstances of the case.

Allow this petition with costs.”

13. On 19.05.2005, Writ Petition No.755 of 2003 was disposed of with direction to the Land Acquisition Officer to hear the petitioner on the application filed by the petitioner on 22.05.2002 before proceeding further into

the matter.

14. On 02.02.2016, he again filed Writ Petition No.1622 of 2006. On 09.05.2006 certain directions were made for presence of Land Acquisition Officer, Indore on the next date of hearing. On 16.05.2006, Land Acquisition Officer, Indore was present, and thereafter, the learned Writ Court dismissed the writ petition as withdrawn with liberty to file a fresh petition if necessary against the said order dated 31.10.2005.

15. The petitioner again filed WP No.4739 of 2006. In the said petition he did not disclose that he had already abandoned a specific part of his claim in earlier petition WP No.244 of 1987. An objection was raised by Indore Development Authority about maintainability of the writ petition and concealing of material facts by filing detailed reply. The writ court came to the conclusion that the petitioner having abandoned part of his plea in the earlier writ petition and having relinquished his right in the suit land, had no right to challenge the action which has attained finality in the earlier round of petition and dismissed the writ petition.

16. A Writ Appeal was filed being WA No.327 of 2008 and the Indore Development Authority filed Contempt Case No.756 of 2014. Both the matters were decided by common order dated 23.06.2017. The Writ Appeal was dismissed with cost of Rs.50,000/- and the Contempt Petition filed by IDA alleging noncompliance of the interim order of status quo dated 1.8.2008 passed in WA No.327 of 2008 was also dismissed.

17. The petitioner filed Review Petition No.287 of 2017. The said review petition was also dismissed by order dated 04.05.2018 holding that there is no error apparent on the face of record. Being aggrieved by the aforesaid order,

the petitioner filed SLP (c) Diary No.28450 of 2018 before the Apex Court, which was decided on 28.09.2018. The order of the Apex court is reproduced as under:-

"Learned senior counsel for the petitioner seeks permission to withdraw these petitions.

Permission is granted.

The special leave petitions are, accordingly, dismissed as withdrawn with liberty to approach the High Court."

18. Thus, the petitioner has exhausted remedy of writ petition, writ appeal, review and SLP and thereafter the present review petition is filed and upon perusal of the order of the Apex Court it is axiomatic that no liberty was granted to file review. The petitioner had himself withdrawn SLP to approach the High Court. It goes without saying that the said liberty has to be resorted to in accordance with law.

19. In regard to the objection regarding maintainability of the second review petition, learned counsel for the petitioner submits that the proceedings are arising out of writ petition and not out of civil proceedings and therefore, in view of section 141 of CPC, the provisions of CPC would not apply to the proceedings of writ under Article 226 of Constitution of India.

20. It is submitted that power of review of High Court in a matter arising out of order under Article 226 of Constitution of India is under inherent power of High Court to review its order. He further submitted that the petition is filed in terms of Rule 11 of Chapter 2 of MP High Court Rules.

21. In support of his submission, he has placed reliance on the judgment passed by the Apex Court in the case of ***Shivdeo Singh and Ors Vs. State of Punjab and Ors*** reported in ***AIR 1963 SC 1909***. The judgment of Full Bench of Madra High Court passed in the case of ***The Mayavaram Financial***

Corporation Ltd. Vs. The Registrar of Chits decided on 07.12.1990/Review CMP No.1186 of 1988 in Writ Appeal No.613 of 1932 reported in **AIR 1990 SCOnline Mad 603** and also the judgment passed by co-ordinate Bench of this Court in the case of *Anand Deep Singh and Ors Vs. State of MP and Ors* reported in **2022 4 MPLJ 323**.

22. A reliance has also been placed on the judgment passed by the Apex Court in the case of *Rajendra Prasad Gupta Vs. Prakash Chandra Mishra and others* reported in **(2011) 2 SCC 705**.

23. We have heard the learned counsels for parties and perused the record.

24. The core question that arises for consideration is whether second review petition arising out of proceedings under Article 226 of the Constitution of India is maintainable or not and if maintainable what is the scope of interference under such proceedings?

25. The law relating to power of review is no longer *res integra*. Unless there is an error apparent on the face of record a review cannot be entertained. It is apposite to survey the law relating to maintainability of review in respect of proceedings arising out of writ jurisdiction.

26. In the case of *Shivdeosingh* (supra), the High Court considered the power of High Court to review its order under Article 226 of the Constitution of India. In para 8 of the order, the court held as under:-

“It is sufficient to say that there is nothing in Art.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. Here the previous order of Khosla, J; affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla J. entertained the second petition. In doing so, he merely

did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J.”

27. Thus, the Court held that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. That was a case where the review was sought of an order passed by the High Court and the Apex Court decided that though there is no specific provisions in regard to power of review, but in a proceeding under Article 226 of the Constitution of India, the High Court has inherent power to prevent miscarriage of justice or to correct grave and palpable errors committed by it. That is not the case herein, since the petitioner had already exhausted the remedy of review and has now filed second review before the High Court.

28. Counsel for petitioner referred the judgment passed by the Full Bench of Madras High Court in the case of *Mayavaram Finance Corporation Ltd.* (supra). Before the Full Bench the question was referred in regard to hearing of a review by other Judge in absence of a Judge who has passed the order and the power of the Chief Justice to assign the case to another bench. It was held that the provisions of CPC does not apply to the writ proceedings under Article 226 of the Constitution of India. A Writ Appeal is the continuation of the writ petition. It was further held that the Chief Justice has the inherent power to allocate the judicial business of the High Court including who of the Judges

should sit alone and who should constitute the bench of two or more Judges. Counsel for petitioner has placed emphasis on an observation made in paragraph 23 that the provisions of CPC would not apply to the writ proceedings being an extra ordinary proceeding which is neither civil proceeding as contemplated under Code of Civil Procedure nor criminal proceeding as contemplated under the Code of Criminal Procedure. It has been held that power of review in a proceeding arising out of Article 226 will apply to the appeal also arising out of writ proceedings under Article 226. The appeal being a continuation of the original proceeding, the rule of procedure which is applied to the original proceeding has to be continued and supplied to the proceeding in the appeal also except such special provisions, which are made specifically applicable to appeal proceedings. It was further held that in matter of review of an order passed in an appeal arising out of a writ proceeding, therefore, it can be safely said, that no provision in the Code of Civil Procedure can be claimed to apply as a matter of course. The contention is that, therefore, the second review arising out of writ jurisdiction and its appeal is maintainable. The aforesaid observation was not an answer to the Reference made to the Full Court of Madras High Court and, therefore, the said observation made by the Full Bench is only obiter and not a law.

29. In the case of **Rajendra Prasad** (supra), the Apex Court while dealing with the provisions of Order 23 Rule 1 and Section 151 CPC held that every procedure is permitted to court for doing justice unless expressly prohibited. There is no express bar in filing an application for withdrawal application. The aforesaid judgment does not render any assistance to the submission of counsel for petitioner that since proceedings are arising out of Article 226 of the Constitution of India, therefore, second review is maintainable.

30. We do not find any substance in the contention of the counsel for petitioner that the present review is maintainable in view of the liberty granted by the Apex Court in its order dated 28.9.2018. Upon perusal of the aforesaid order which has already been quoted in the preceding paragraph it is axiomatic that the court has accepted the prayer of counsel for petitioner to withdraw the petition and liberty was sought to approach the High Court. The Apex Court has not granted any liberty to file a review petition after the dismissal of review petition by the High Court. Even otherwise the liberty has to be examined in the light of the provisions of the law.

31. Thus, we hold that a second review petition is not maintainable.

32. The petitioner has already exhausted remedy of Writ appeal and review jurisdiction and thereafter the SLP has also been withdrawn without any adjudication on merit. The petitioner has exhausted the remedies before all the forums and thereafter has filed the present second review petition challenging the order passed in the earlier review petition arising out of writ appeal. If the submission of counsel for petitioner is accepted, then there would be no end to the litigation and in a proceeding arising out of Article 226 of the Constitution of India the parties may file number of review petitions which would be against the doctrine of finality. The doctrine of finality has been considered in the case of ***Rashid Khan Pathan and Vijay Kurle and Ors In Re*** reported in (2021) 12 SCC 64 wherein in para 10 it has been held as under:-

“10. In a country governed by the rule of law, finality of the judgment is absolutely imperative and great sanctity is attached to the finality of the judgment. Permitting the parties to reopen the concluded judgments of this Court by filing repeated interlocutory applications is clearly an abuse of the process of law and would have far-reaching adverse impact on the administration of justice.”

33. The aforesaid principle of finality has been followed in a subsequent judgment by the Constitution Bench of Apex Court in the case of ***Rupa Ashok Hurra Vs. Ashok Hurra*** reported in **(2002) 4 SCC 388** and has reiterated the aforesaid principle of finality. The relevant para 40 is reproduced as under:-

"40. The petitioners in these writ petitions seek reconsideration of the final judgments of this Court after they have been unsuccessful in review petitions and in that these cases are different from the cases referred to above. The provision of Order XL Rule 5 of the Supreme Court Rules bars further application for review in the same matter. The concern of the Court now is whether any relief can be given to the petitioners who challenge the final judgment of this Court, though after disposal of review petitions, complaining of the gross abuse of the process of court and irremedial injustice. In a State like India, governed by rule of law, certainty of law declared and the final decision rendered on merits in a lis between the parties by the highest court in the country is of paramount importance."

34. The aforesaid principle has been followed in a recent judgment by the Apex Court in the case of ***Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association*** reported in **(2023)10 SCC 817**. Thus, the Apex Court has laid down that in a country governed by a Rule of law, finality of judgment is absolutely imperative and great sanctity is attached to the finality of the judgment. Permitting the parties to reopen the concluded judgments by filing repeated interlocutory applications, is clearly an abuse of process of law and would have far reaching adverse impact on the administration of justice. The petitioner has already exhausted remedy of writ petition, writ appeal, review and SLP. All the courts have dismissed the case of the petitioner. In the present case, counsel for petitioner could not point out any grave and palpable errors committed by the courts in its order. Under the garb of review jurisdiction, the petitioner cannot be permitted to re-argue the matter again and again.

35. In view of the aforesaid, the present petition for review being devoid of

merit is dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

SY/VM

(VIJAY KUMAR SHUKLA)
JUDGE

