BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

REVIEW APPLICATION NO. 22 OF 2015

(M.A. NO. 789, 790 & 791 OF 2015, 851 & 852 OF 2015)

IN

ORIGINAL APPLICATION NO. 177 OF 2013

IN THE MATTER OF:

U.P. State Industrial Development Corporation
H.No. A-1/4, Lakhan Pur,
Kanpur– 208024, U.P.

.....Applicant

Versus

1. Chief Secretary
   Government of UP
   5th Floor, Secretariat
   Lucknow – 226001

2. Commissioner
   Meerut Division
   Civil Lines
   Meerut-250001

3. District Magistrate
   Ghaziabad, Collectorate Compound
   Raj Nagar, Ghaziabad – 201001

4. Sushil Raghav
   S/o Sh. Ratan Singh
   R/o Karkar Model Village
   Site 4, Sahibabad Post
   Ghaziabad-201001

..... Respondents

COUNSEL FOR APPLICANT:

Mr. Rajesh Raina, Advocate

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Reserved on: 24th August, 2015
Pronounced on: 15th September, 2015

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The respondent no. 4, who is a Journalist, had filed O.A. No. 177 of 2013 with a prayer that the respondents in the said main application be directed to remove all the encroachments made on the ponds and other water bodies as per list attached to the application. It was the case of the applicant that large numbers of ponds were being destroyed and devastated and were also contaminated by all sorts of illegal activities including encroachments, made by various persons. Reliance was also placed upon the order of the Hon'ble Supreme Court in I.A. No. 29 of 2012 in C.A. No. 1132 of 2011, where the Hon'ble Supreme Court had directed that encroachments should be removed. Reliance was also placed upon the order of the Hon'ble Allahabad High Court in Writ Petition No. 6472 of 2012 in the case titled as *Om Prakash Verma v. State of UP & Ors.*, where different directions were issued to various authorities in relation to Gram Sabha lands and the ponds situated in the area. Even the Chief Secretary, Uttar Pradesh had issued directions in that regard. Despite

all this, effective steps were not taken by the concerned authorities to remove the encroachments, particularly, over the ponds and other water bodies. After hearing the parties, the bench of the Tribunal vide its order dated 3rd December, 2014 passed the following directions:

> "15) In such view of the matter, we are of the view that the application deserves to be allowed with the following directions. Accordingly, we allow this application with the following directions:-
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> 1. The respondents shall take immediate action for the purpose of removal of all encroachments over the ponds and other water bodies especially as mentioned in the letter of the Chief Secretary of Government of Uttar Pradesh dated 15.05.2013, which are as follows:
>
> *"(i). All kinds of encroachments must be removed from ponds, pokhars, grazing grounds and graveyards situated within the limits of all Municipal Corporations, Municipalities and Nagar Panchayats local bodies of the State.*
> *(ii). Extensive publicity should be ensured at your level through all print and electronic media for removal of illegal possessions/encroachments upon the aforementioned places.*
> *(iii). Immediate inquiry must be conducted on the complaints received regarding encroachments and if found, strict action be taken for removal of such encroachments.*
> *(iv). Videography of these places should be undertaken, before and after anti-encroachments drives.*
> *(v). Municipal Commissioners of Corporations, Executive Officers of the Municipalities and Nagar Panchayats and the senior-most officers of the Development Authorities, Police Department, Revenue Department and other concerned Departments will be personally responsible for any of encroachment under their respective jurisdictions.*
> *(vi). In this connection, please note that complete details/particulars of the place freed from illegal encroachments shall be sent on prescribed format (enclosed herewith) to the Director Local Bodies, U.P., Lucknow through the concerned District Magistrates before 5th day of every month. It is the duty of the district-wise information and then send the same to the government before 5th of every month positively."*

> 2. Such action shall be implemented expeditiously by the government and other agencies of the government in accordance with law in any event preferably within a period of six months from today with liberty to the government to approach this Tribunal for extension of the period with appropriate reasons.
> 3. The Chief Secretary of State of Uttar Pradesh, through responsible officer shall file status report before the Registry of this Tribunal once in 30 days starting from 1st January, 2015 about the action taken in this regard.
> 4. It is always open to the applicant to make a mention before this Tribunal in case he finds any difficulty or deficiency on the part of the governmental authorities in enforcing the orders of the Tribunal."

2. The U.P. State Industrial Development Corporation (UPSIDC) has now filed Review Application No. 22 of 2015 under Section 19 (4) (f) of the National Green Tribunal Act, 2010 (for short 'NGT Act') read with Rule 22 of the National Green Tribunal Practice and Procedure Rules, 2011 (for short 'Rules of 2011), seeking not only the review of the impugned order but even prays for setting aside the Judgment dated 3rd December, 2014, passed by the Tribunal in Miscellaneous Application No. 635 of 2014 in Original Application No. 177 of 2013.

3. According to the review applicant, they were not a party to the petition or the application which has been disposed of by the Tribunal vide its order dated 3rd December, 2014. It is the case of this applicant that it is a Corporation primarily taking over the development of the industrial clusters and their maintenance in the State of Uttar Pradesh. In the year 1972, the Meerut District Administration had given possession of the land to the review applicant and subsequently, the plots were developed in Khasra No. 468 and 469. The review

applicant had never acquired Khasra No. 289 and as such it has nothing to do with this Khasra Number. It has been stated that Khasra No. 468 was acquired by the Government vide notification dated 23rd June, 1970. Land under Khasra No. 469 was acquired as the result of resumption as per Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reform Act, 1950 (for short 'Act of 1950'). The Review applicant has also stated that it was not a party respondent in the matter before the Hon'ble Supreme Court of India when it passed order in IA No. 29 of 2012 in C.A. No. 1132 of 2011.

Vide order dated 3rd December, 2014 and as is evident from the above referred extract of the order dated 3rd December, 2014, the Tribunal had directed the respondents to take immediate action for the purpose of removal of all encroachments over the pond and other water bodies, especially, as were mentioned in the letter dated 15th May, 2013 of the Chief Secretary of the Government of U.P. These steps were to be taken within a period of 6 months from the date of the order. Though the review applicant was not a party to the order, but still it was observed in the order dated 3rd December, 2014 that the senior most officer of the Development Authority would be personally responsible for any encroachment in their respective jurisdictions. The Chief Secretary of the State of Uttar Pradesh, through responsible officers, was required to file a Status Report in the Registry of the Tribunal within 30 days starting from 1st January, 2015.

Feeling aggrieved from the above Judgment of the Tribunal, the review applicant preferred a statutory appeal before the Hon'ble

Supreme Court of India being C.A. No. 12382 of 2015 titled as *Uttar Pradesh State Industrial Development Corporation v. Sushil Raghav and Ors.* This appeal was dismissed by the Hon'ble Supreme Court of India, while granting liberty to the review applicant to approach the Tribunal. The order of the Hon'ble Supreme Court dated 14th July, 2015 reads as follows:

> "ORDER
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> 1. Shri Rakesh Dwivedi, Learned senior counsel appearing for the appellants, on instructions, seeks permission of this Court to withdraw this appeal with liberty to file a Review Petition before the National Green Tribunal, New Delhi bringing to their notice that their allotment was of the year 1972 and they have made substantial improvement on the allotted land.
> 2. Permission sought for is granted. The Civil Appeal is disposed of as withdrawn with the afore-mentioned liberty. It is for the tribunal to consider the Review Petition on its own merits.
> 3. Liberty is granted to the appellants to approach this Court once over again, in case they fail in the Review Petition, to challenge the impugned order as well as order passed in the review petition.
>
> Ordered accordingly"

4. In furtherance to the permission granted by the Hon'ble Supreme Court of India, the applicant has filed the present review petition. It is submitted that the land located in Khasra No. 468 and 469 and the ponds have been shown in the sketch plan, Annexure-G to the application. In this sketch plan, the pond is shown with yellow colour being depicted on Khasra No. 469, while Khasra No. 468 is at the end of the area shown in red colour. As far as Khasra No. 289 is concerned, the applicant submits that it has never acquired the said land. Further it is averred that out of Khasra No. 468 and 469, plots were allotted to the industrial units by UPSIDC. At the time of allotments there was no restriction on such allotments even if the

plots fell on pre claimed ponds or the areas nearby. Respondent no. 4 had approached the Tribunal for removal of these encroachments by the industrial units from the ponds and other water bodies.

An application in terms of Section 14 (3) of the Act of 2010 ought to be filed within 6 months from the date when the Cause of Action first arose. According to the review applicant, the industries which are located upon Khasra No. 468 and 469 were not parties to the *lis* decided by the Hon'ble Tribunal. It is submitted that the Hon'ble Tribunal could not have passed a sweeping order against these parties particularly when the application was not filed within the period of limitation. The implementation of order of the Tribunal under review would positively come in the way of Sustainable Development and there will be huge loss of revenue. Also, closure of these industries will render huge unemployment and thus loss to the local families. According to the applicant the 60 feet wide road was constructed in the year 1970, over a large part of the graveyard. This road is the solitary road which connects the village to the other areas.

According to the review applicant there is no illegal encroachment and it will be difficult to implement the order without causing irreparable loss to the industrial clusters and particularly to the industries whose units are located on the land in question. In relation to limitation, it is also submitted that the applicant in the main Application No. 177 of 2013 had not shown any sufficient cause for condonation of delay.

It is contended on behalf of the review applicant that on these grounds the judgment of the Tribunal suffers from the error apparent

on the face of the record and therefore the judgment and the directions issued therein to the review applicant should be recalled.

5. The Hon'ble Supreme Court of India in the case of *Jagpal Singh and Ors. v State of Punjab and Ors.,* Civil Appeal No. 1132 of 2011, while dealing with the judgment of the Hon'ble Punjab and Haryana High Court noticed that the appellants therein were trespassers who illegally encroached and even built up houses on the *Gram Sabha* land, in collaboration with the officials and even the *Gram Panchayat*. The land was recorded as a village pond and such land could not be allotted to anybody for construction of houses or for any other allied purposes. The Hon'ble Supreme Court of India issued directions to all the State Governments in that case, that they should prepare schemes for eviction of illegal, unauthorized occupants on *Gram Sabha* lands, and the scheme should provide for speedy eviction of such illegal occupants after giving them a Show Cause Notice and a brief hearing. The Hon'ble Allahabad High Court in the case of *Om Prakash Verma (supra)* had issued directions for ensuring that the procedure prescribed under law should be followed for restoration of possession of land allotted to any person on the *Gram Sabha* land and water bodies etc. The Tribunal while heavily relying upon these two judgments had issued directions particularly in relation to the ponds upon which there were unauthorized and illegal encroachments. Thus, it was directed that the encroachments must be removed from the Ponds, Pokhars and Grazing Grounds and graveyards. In light of this, the contentions raised by the review applicant are without merit.

The plea of limitation raised by the review applicant is also misconceived. The main applicant in O.A. No. 177 of 2013 had invoked the jurisdiction of the Tribunal under Section 14 of the Act of 2010. The prayer of the applicant was that there was destruction and devastation of the pond which was used by the public for long time and the same were being contaminated by all sorts of illegal and unauthorized activities. This was primarily an environmental issue which would bring a recurring cause of action, each time giving accrual to an actionable claim. In other words, each encroachment on these ponds would give rise to a fresh and distinct cause of action, which would extend the period of limitation. Each event of contamination of water bodies would be a distinct cause of action, upon which an applicant can base his claim. In the light of the principle stated in the case of *Forward Foundation & Ors. v. State of Karnataka & Ors.* , O.A. No. 222 of 2014 (as pronounced on 7th May, 2015), we are of the considered view that the main application of the applicant was filed within the prescribed period of limitation under the Act of 2010. In any case, in light of the judgment of the Hon'ble Supreme Court of India and that of the Hon'ble High Court of Allahabad, these directions were required to be issued and hence would not be hit by the plea of limitation.

The grounds taken by the review applicant are primarily the ones which require rehearing of the same issues that had been raised in O.A. No. 177 of 2013. These issues were considered by the Bench and in any case would be deemed to have been considered and rejected by the judgment of the Tribunal dated 3rd December, 2014. Even with

reference to the map filed by the review applicant as Annexure G, it is clear that in village Karkar Model, Sahibabad, Khasra No. 469 is shown to be a pond, around which constructions have been raised, may be after demarcation of plots. In face of these documents, the averments made in Review Application, hardly stands to reason that there were no water bodies on these areas. The Principle of Sustainable Development and revenue laws would be relevant in cases where the acts done are in accordance with law and are not destroying the environment and ecology; which is not so in the present case. However, if the water bodies were in existence and there are judgments of the Hon'ble Apex Court as well as the Hon'ble Allahabad High Court and letter from the State administration to ensure that water bodies should not be encroached upon, then such illegal activities and unauthorized constructions are liable to be removed. In that event it was obligatory upon the part of the State and its various concerned departments to ensure the implementation in accordance with law. It is a settled principle of law that in the garb of a Review Application, an applicant cannot re-agitate issues again which were raised or ought to have been raised during the hearing of the main application.

The Tribunal while deciding upon a similar question, in case of *Amit Kumar v. Union of India & Ors.,* Miscellaneous Application No. 240 of 2014 In Original Application No. 158 of 2013 (decided on 30th May, 2015), after considering various Supreme Court judgments held as under:

"9. The power of this Tribunal to review an order passed earlier, and the source of that power cannot be disputed. Section 19 of the National Green Tribunal Act, 2010 provides the procedure and powers of the Tribunal. Under sub section 4, the Tribunal, shall have for the purpose of discharging its functions under the Act, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect of the matters provided under clause (a) to (k). Clause (e) is the power to review its decision. Therefore, it is clear that the Tribunal is competent to review its decision and that the power of review is to be exercised, as provided under the Code of Civil Procedure, 1908. Therefore, the power of review provided under section 19(4)(f) of National Green Tribunal Act, 2010 is akin to the powers provided under section 114 and rule 1 of order 47 of Code of Civil Procedure which provide that any person considering himself aggrieved by a decree or order for which no appeal has been preferred, or from which no appeal is allowed, may apply for review, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. The explanation to rule 1of order XLVIII reads as follows: "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."

10. The Hon'ble Supreme Court in K. Ajith Babu V.s Union of India (1997) 6 SCC 473) held that even though Order XLVII Rule 1 is strictly not applicable to the Tribunals, the principles contained therein have to be extended to them as otherwise there would be no limitation for the power and consequently there would not be any finality or certainty of order. The Hon'ble Supreme Court in "*Ajit Kumar Rath Vs State of Orissa*, (1999 9 SCC 596") holding that the power to review vested in the Tribunal is similar to the one conferred upon a civil Court under the Code of Civil Procedure held:

"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 set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

11. The scope of review under order 47 rule1 is distinct from that of an appeal. In "Thungabhadra Industries Ltd. vs. Government of Andhra Pradesh, (AIR 1964 SC 1372)" it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.

12. After analyzing the earlier decisions the Hon'ble Supreme Court in the state of West Bengal and others V.s Kamal Sengupta ((2008) 8 SCC 612) held:

"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 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."

13. Taking note of the explanation dated to Rule 1 of Order 47 of Code of Civil Procedure, the Hon'ble Supreme Court in Haridas Das V.s Usha Rani Banik (2006) 4 SCC 78 held:

"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 '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 favorable 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 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."

14. What is an error apparent on the face of the record provided under Rule 1 of Code of Civil Procedure is also settled. The five Judge Bench of the Federal Court in "Hari Sankar Pal V.s Anath Nath Mitter (1949 FCR 36) it was held:

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

15. In Parsion Devi and others V.s Sumitri Devi (1997) 8 SCC 715), the Hon'ble Supreme Court held:

"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'."

16. Therefore, the power of review of its own decision provided under section 19(4) (f) of the National Green Tribunal Act is to be exercised bearing in mind the limitation provided under rule 1 of Order 47 of Code of Civil Procedure, in the light of the settled principles."

6. Having found no merit in these contentions, the only issue that requires consideration of the Tribunal is whether we should pass any

clarificatory directions while declining to review the Judgment dated 3rd December, 2014. In this regard, it is necessary that conditions of existence of water bodies at the given point of time, as well as encroachments or illegal and unauthorized constructions around and on the water bodies, must be satisfied before the process prescribed under the directions in the judgment of the Hon'ble Supreme Court of India in *Jagpal Singh* case (supra) can be applied. Thus we consider it appropriate to issue the following clarificatory directions which shall apply *mutatis mutandis* to the judgment of the Tribunal dated 3rd December, 2014:

1) We constitute a Committee of the following officers to submit a report to the Tribunal:

   i. A senior officer of the Revenue Department from the District other than District Sahibabad, Uttar Pradesh.

   ii. Senior Officer of the Uttar Pradesh Industrial Development Corporation.

   iii. A member of the Uttar Pradesh Pollution Control Board.

   iv. S.D.M of the concerned area.

2) This Committee, upon physical inspection as well as inspection of Revenue Records, particularly Annexure-G to the Review Application, shall answer the following:

   A) How many water bodies are in existence in the area in question including Khasra No. 469?

   B) What are the constructions raised on or around the water bodies, pond or otherwise?

C) When and with whose sanction were these constructions raised?

D) Notice to be served on all the concerned parties and a reasonable opportunity of being heard shall be given to them.

E) The Committee will also submit whether any part of the graveyard falling in Khasra No. 319 has been encroached upon by construction of the road.

F) Whether there has been any adverse environmental and ecological impact and whether there has been any contamination of ponds and other water bodies in that area.

3) The report will be submitted to the Registry of the Tribunal within one month from the date of pronouncement of this judgment and the same shall be placed before the Tribunal.

7. M.A. No. 851 of 2015 is filed by the petitioner for condonation of delay of approximately 240 days in filing the present review petition. Vide order dated 14th July, 2015, Hon'ble Supreme Court of India had granted liberty to the applicant to approach the Tribunal by filing the Review Application. The present application for review was filed on 3rd August, 2015. Consequently, in this application the delay in filing the present review application is condoned.

M.A. Nos. 789, 790, 791 and 852, all of 2015 are applications filed by the review applicant seeking exemption from filing certified copies of the Annexure, typed copies of the illegible Annexure and from filing

English translation of Hindi documents/Annexure respectively, filed along with the application. Since the matter has already been heard on merits and is being disposed of finally by this judgment, all these applications have become infructuous and are disposed of as such.

8. With the above directions Review Application No. 22 of 2015 along with M.A. Nos. 789, 790, 791, 851 & 852 of 2015; in Original Application No. 177 OF 2013 are disposed of, however, without any order as to costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Justice M.S. Nambiar
Judicial Member

Dr. D.K. Agrawal
Expert Member

Mr. Ranjan Chatterjee
Expert Member

New Delhi
15th September, 2015