I. Case Reference

Case Citation	:	(2023) ibclaw.in 79 HC
Case Name	:	National Highways Authority of India Vs. Ashutosh Agrawal
Appeal No.	:	REVP No. 94 of 2020
Judgment Date	:	03-Feb-23
Court/Bench	:	High Court of Chhattisgarh
Present for Petitioner(s)	:	Mr. J.K. Gilda, Sr. Advocate with Mr. Dhiraj Kumar Wankhede, Advocate Mr. Sahil Singh, Advocate and Mr. Pranay Golchha, Advocate
Present for Respondent(s)	:	Mr. Amit S. Agrawal, Sr. Advocate with Mr. Ankit Singhal, Advocate, Mr. Ramakant Mishra, Dy.S.G.
Coram	:	Mr. Justice P. Sam Koshy and Mr. Justice Parth Prateem Sahu
Original Judgment	:	Download

II. Full text of the judgment

C.A.V. ORDER

Per, Hon'ble Mr. Justice P. Sam Koshy

1. The present Review petition has been filed seeking Review of the Judgment dated 06.12.2019 passed in writ appeal 7/2019 and other connected appeals decided analogously. The judgment against which Review petition has been preferred, was a bunch of Writ Appeals arising out of a common Judgment passed by the Single Bench of this High Court dated 18.09.2018 in Writ Petitions (Civil) No. 3154/2017 and other connected Writ Petitions where the Writ Court had initially dismissed these Writ Petitions declining to interfere with the course of action pursued by the Competent Authority (Land Acquisition) regarding fixation of compensation upon compulsory acquisition of land belonging to the Writ Petitioners. The Order against which the Review has been preferred was one which was decided on 16.12.2019.

2. The Review petition has been filed primarily seeking Review of the order so far as the maintainability of the Writ Petitions under Article 226 of the Constitution of India. Secondly, on the ground that the National Highways Authority of India (NHAI) was not granted a fair and reasonable opportunity of defending their case. It was also the contention of the Review Petitioner that the Writ Appeals have been allowed by the Division Bench on mere asking of the same in a mechanical manner without deliberating upon the legal and factual aspects as regards the claim put forth by the Writ Petitioners.

3. It was also the contention of the Review Petitioner that as the NHAI was not given a chance to file a detail reply to the Writ Petitions and the bunch of Writ Petitions and Writ Appeals have been decided only on the primarily objections filed by them. That now as a consequence of the Writ Appeals being allowed, the NHAI as such has been rendered remedy less. It was also the contention of the Review Petitioner that the Petitioners had in fact earlier filed Writ Petitions for the same relief which was withdrawn and now fresh Writ Petitions have been filed with only some cosmetic changes. Since there was no relief earlier granted, the subsequent Writ Petitions itself would not have been maintainable. It was the further contention of the learned counsel for the Review-

Petitioner that the issue involved in these Writ Petitions and Writ Appeals were all highly disputed questions of facts and law, which could not have been ventured into by the High Court in exercise of its Writ Jurisdiction. Lastly. It was contended that the finding given by the Division Bench also on the aforesaid grounds are incorrect finding. Therefore, it has to be accepted as an error apparent on the face of record. Further that, the order passed by the Writ Appellate Court also was in contravention to the Judgment of the Hon'ble Supreme Court, which again is a strong ground for the Review to be allowed.

4. Per contra, the learned counsel for respondents opposing the Review Petition submits that none of the grounds that have been raised by the Review Petitioner are the grounds available under the purview of a "Review". According to the learned counsel for the respondents, by way of the instant Review Petition, the NHAI has literally sought for rehearing of the entire Writ Appeals afresh altogether on its merits which is otherwise not permissible under the Review jurisdiction. It was the further contention of the learned counsel for the respondents that a Review Petition cannot be entertained on grounds which were neither urged nor canvassed at the first instance. According to the learned counsel for the respondents, what has not been argued, urged and canvassed, cannot be a ground for Review. Rather all the grounds which have been raised and contented are grounds which would be available only by way of an Appeal and the Review petition therefore is not sustainable. It was the further contention of the learned counsel for the respondents that the jurisdiction of this High Court in a Review Petition is too narrow and the scope of interference by way of Review also is too restricted.

5. According to the learned counsel for the respondents the plain perusal of the order which is sought to be reviewed would by itself reveal that it is exhaustive and has also dealt with every grounds that were raised by the NHAI including that of the maintainability part. That since the Judgment being exhaustive and having dealt with all the grounds raised and contended by the NHAI before the Division Bench, they cannot now be permitted to raise those very grounds again by way of a Review petition.

6. It would be relevant at this juncture to take note of the issues which have been dealt with and answered by the Division Bench while deciding those Writ Appeals preferred by the private respondents. For ready reference, issues 1(a) to 1(h) are being reproduced here-in under:-

> **"1 (a) Whether the 'minimum value', if any, stipulated in the Indian Stamp Act, 1899 (for short, 'the Stamp Act') or the relevant Rules/Guidelines stipulated for fixing stamp duty in respect of the conveyance to be registered reflects the 'actual market value' to be paid to a land owner, pursuant to the compulsory acquisition of his property ?**
>
> **(b) In respect of an acquisition under the National Highways Act, 1956 (for short 'the N.H. Act'), read with the relevant provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the 'Act, 2013'), can the market value of the property be fixed simply with reference to the extent/area of land owned by the land owner, as adopted by the Respondents, giving paltry compensation on the basis of the higher extent/area of the land (which is lesser than the compensation in respect of the adjoining lands) resulting in payment of higher compensation to the land owner having lesser extent ?**

(c) Does the Scheme of either the N.H. Act or the Act, 2013 envisage a course of action detrimental to the land owner having higher extent of land, than the land owner having exactly similar land situated nearby, but of lesser extent, in turn, providing for unlawful gain to the requisitioning authority / acquisitioning authority ?

(d) Is Clause '3' of Annexure-P/16 Guidelines stipulating for payment of compensation with reference to the extent of land owned by a person is correct and sustainable or if the stipulation therein has been correctly interpreted and applied by the Competent Authority while passing Annexure-P/14 award ?

(e) Can the payment of Rs. 1 crore for 999 sq.mt. of land to one land owner and payment of just Rs. 25 lakhs for a land owner having property of 1001 sq.m. (both exactly identical and of equal importance and potential value situated side by side) be justified, with reference to the area/extent of Rule/Guidelines applied by the Competent Authority; when it stipulates that property having area/extent upto 1000 sq.mts. will be given full market value and only 25% of the market value for land having area/extent of more than 1000 sq.mts. ?

(f) If there is patent arbitrariness in the 'decision making process' and the decision taken, should the party be relegated to the remedy by way of Arbitration and whether the course pursued by the learned Single Judge declining to interfere under Article 226 of the Constitution of India can be justified ; more so, where there is no disputed question of fact ?

(g) Is the alternate remedy a bar of law, or rule of convenience ?

(h) What is the Scheme of the N.H Act and does it take away or lessen the right of the land owner to get full compensation payable to him under the 'Act, 2013', on compulsory acquisition of land ?

These are some of the important points formulated to be considered and answered in these appeals."

7. So far as, the ground that the Writ appeals and the Writ Petitions were not maintainable and have not been properly considered by the Division Bench, it would be relevant at this juncture to mention that in paragraphs 11 to 17 of the order of the Division Bench in Writ Appeal No. 07/2019 dated 06.12.2019 the Division Bench, after exhaustively dealing with the issue of maintainability as also issue of alternative remedy, has answered the question in favour of the original Writ Petitioners. For ready reference paragraph 11 to 17 is being reproduced here-in-under:-

"11. It is true that Section 105(1) of the 'Act, 2013' stipulates that the provisions of the said statute shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule – which includes the N.H. Act as well. But as mentioned in sub-section (1), it is ofcourse subject to sub-section (3). Sub-section (3) of Section 105 of the Act, 2013 stipulates the power conferred upon the Central Government to issue modification and direct that any provisions of the 'Act, 2013' relating to determination of the compensation in accordance with the relevant Schedules mentioned therein shall apply to the land acquisition under any enactment

under the Fourth Schedule or shall apply with such exceptions or modifications as stated therein. However, Section 3J of the N.H. Act excluding the operation of the L.A. Act has been struck off by the Apex Court in Tarsem Singh's case (supra); by virtue of which, the L.A. Act stands applicable for fixing the compensation under the N.H. Act. But since the 'L.A. Act' has been repelled as per the 'Act, 2013', the latter Act has taken its position by virtue of which, the provisions in the 'Act, 2013' will govern the field for fixing the compensation, in the said circumstance.

12. With regard to the sole reason for declining interference by the learned Single Judge, with reference to existence of alternate remedy by way of Arbitration under Section 3G(5) of the N.H. Act, the learned submits that the Arbitration is governed by the provisions including the Guidelines. The arbitrariness of the Guidelines fixed by the Collector for fixing compensation, merely with reference to the actual area/extent of land of the land owner cannot be changed, as the Arbitrator is having no plenary power in this regard. As it stands so, Arbitration can never be an efficacious remedy; which aspect has been omitted to be noted by the learned Single Judge, despite the specific pleadings raised in the writ petition and pressed before the Court by filing a review (which came to be dismissed holding that there was no error apparent on the face of the record). The learned counsel also points out that alternate remedy is no bar for exercising the discretion of this Court under Article 226 of the Constitution of India. Reliance is sought to be placed in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District Calcutta and Another AIR 1961 SC 372* (paragraphs 26 & 27); which principles are reiterated in *Whirlpool Corporation Vs. Registrar of Trade Marks Mumbai and Others (1988) 8 SCC 1* (paragraphs 15, 16 & 20), *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others (2003) 2 SCC 107* (paragraph 7) and *Union of India Vs. Tantia Construction Private Limited (2011) 5 SCC 697* (paragraphs 21, 22 & 33). In support of the case that market value cannot be fixed with reference to the extent/area of the property, the learned counsel seeks to place reliance on *Ali Mohammad Beigh and Others Vs. State of Jammu and Kashmir (2017) 4 SCC 717* (paragraphs 12 & 13) and a judgment dated 26.09.2013 of the Apex Court in Civil Appeal No. 225 of 2005 (paragraphs 18 & 23) and also *Narendra and Others Vs. State of U.P. and Others (2017) 9 SCC 426* (paragraphs 11, 15 & 16).

13. Referring to the scope and intent of the Chhattisgarh Preparation and Revision of Market Value Guideline Rules, 2000 framed in exercise of power under Section 75 of the Stamp Act read with Section 47-A of the State amendment, it is pointed out that the Rules operate only in a limited field i.e. with reference to payment of stamp duty in terms of Section 3 of the Stamp Act. Rule 2(e) of the above Rules is extracted below :

> **"2 (e) "Market Value Guidelines" means the set of values of immovable properties in different villages, Municipalities, Corporations and other local areas in the state, arrived at by the respective committees from time to time in term of these rules."**

14. The learned counsel submits that both the L.A. Act and the Stamp Act derive the

source of power to legislate as traceable to Entry No. 42 of List III of 'Concurrent list'. Although one provision may be quite alright in its field, if it violates the Constitution in other context, it has to be read down, applying the 'doctrine of reading down', as explained by the Apex Court in *Cellular Operators Association of India and Others Vs. Telecom Regulatory Authority of India and Others (2016) 7 SCC 703* (paragraphs 50 & 51).

15 Shri Sudeep Agrawal, learned Deputy Advocate General submits that the writ petitions were rightly dismissed by the learned Single Judge as separate and efficacious alternate remedy has been provided under the statute by way of Arbitration under Section 3G(5) of the Act, 1956. The learned counsel for the Government submits that the challenge against the relevant clauses, particularly, Clause '3' of the Annexure-P/16 Guidelines for fixing of compensation is not correct or sustainable and that the norms have been correctly applied by the Competent Authority. It is pointed out that, even according to the writ petitioners /Appellants / Claimants, Clause '7' of the Guidelines would provide a better compensation and if this be the position, "which clause should be applied" was a matter that could to be decided by the Arbitrator, as held by the learned Single Judge, which finding hence does not require interference. It is asserted by the learned counsel that, when there is a complete mechanism to have the grievance considered, Writ Courts are normally not to entertain the challenge in view of the ruling rendered by the Apex Court in *Harbanslal Sahnia's case* (supra) {paragraph 7}. It is also pointed out that no violation of any fundamental right is involved, but for such other rights and there is no infringement of any natural justice as well, by virtue of which, the rulings sought to be relied on by the Appellants are not attracted. Reference is made to the dictum of the Apex Court in *Commissioner of Income Tax and Others Vs. Chhabil Dass Agrawal (2014) 1 SCC 603* explaining the scope of Article 226 of the Constitution of India; besides citing the verdict dated 04.10.2019 passed by a Division Bench of this Court in Writ Appeal No. 319 of 2019 in this regard.

16 The learned Senior Counsel appearing for the Appellants submits, in reply, that the challenge raised against Clause '3' of Annexure-P/16 Guidelines in mechanically fixing the compensation with reference to actual extent of land / area of the land involved cannot be quashed by the Arbitrator, for want of power or jurisdiction, but for deciding the issue on the basis of available materials / provisions.

17 After hearing both the sides and also in view of the precedents cited from both the sides, we do not have any doubt to hold that power of this Court under Article 226 of the Constitution of India, which is even wider of the power of the Apex Court under Article 32 cannot be curtailed by any statute. The existence of alternate remedy is more a 'rule of convenience' and the parties would be relegated to pursue such remedy, under normal circumstances. But if special circumstances are involved or whether the proceeding under challenge is per se arbitrary and illegal or if it has resulted in total miscarriage of justice, the discretionary power vested in this Court to have the matter considered under Article 226 is always there, to be invoked. In view of the particular nature of challenge raised and the factual position demonstrated by the Appellants, resulting in payment of higher compensation to an adjoining /

identical property having a lesser extent/area while awarding only a lower amount to the Appellants (merely for the reason that the property involved is having a higher extent) cannot but be held as an arbitrary exercise and we find it appropriate to have it considered by this Court. The question is answered in favour of the Appellants and against the Respondents."

8. As regards the principles in respect of the market price of the immovable properties are concerned, the perusal of the order of the Division Bench in the aforesaid Writ Appeal from paragraph 21 to 27 would again show that the Division Bench has already at considerable length deliberated and discussed and then has reached to the conclusion that the fixation effected by the Competent Authority is not correct and sustainable and also being totally arbitrary and perverse. Further perusal of the records would also show that the Division Bench has also discussed the aspects of stamp duty payable under the Stamp Act which again is one of the grounds raised by the Review Petitioner seeking for the Review. Thus, the bare perusal of the impugned order of which Review has been sought would clearly show that it has been passed after hearing all the parties to the dispute, it has been decided after dealing with all the grounds which were raised by the contesting parties. For ready reference paragraph 21 to 27 is also reproduced here-in-under:-

"21. In order to answer the above question, we find it appropriate to extract the guiding principles in respect of 'Market Price of Immovable Properties' notified for the year 2016-17 as applicable to the Office of the Sub-Registrar, Simga, District – Baloda Bazar – Bhatapara (C.G.) (as involved herein), which provides separate rates in respect of 15 wards comprised therein, as approved by the Central Evaluation Board. The 'heading' of the 'Form – One' in respect of Ward No.12 (Hardevlal Ward) and Ward No.13 (Kankalinpara Ward) and the relevant data are given as below :

Verbatim English translation is as given below :

"Form – One
(see Rule – 7)
Nagar Panchayat Simga
Market Price of Urban Properties Guiding Principles 2016-17
Office of the Sub-Registrar – Simga

Rate in Rupess per Square meter

Ward	Para No.	Mohalla (Neighbourhood) / Colony / Society	Rate till 20 meters in the event of the property being situated on road	In the even of the property being inwards from road (which also includes the rate of beyond 20 meters from the main road)
1	2	3	4	5
1	xxx	xxx	xxx	xxx
2	xxx	xxx	xxx	xxx
3	xxx	xxx	xxx	xxx
4	xxx	xxx	xxx	xxx
5	xxx	xxx	xxx	xxx
6	xxx	xxx	xxx	xxx
7	xxx	xxx	xxx	xxx
8	xxx	xxx	xxx	xxx
9	xxx	xxx	xxx	xxx
10	xxx	xxx	xxx	xxx
11	xxx	xxx	xxx	xxx
12	**Hardevlal Ward**			
	1	From Mangtu Dhaba (motel) to Bhatiya Perol Pump via Mahindra Tractor Showroom (Raipur – Bilaspur National Highway)	21500	21500
	2	From J.D. Family Dhama (motel) to Bhatiya Petrol Pump via Kulwant Singh Petrol Pump (Raipur – Bilaspur National Highway)	24000	15000
	3	From Bhatiya Petrol Pump to Sharda Medical Store (Raipur – Bilaspur National Highway)	26500	17900
	4	From Sharda Medical to the house of Om Tamboli, Shringarika General Stores (Simga Tilda Road)	15500	9500
13	**Kankalinpara Ward**			
	1	From Pipe Factory to Haji Shakoor’s farm via Dua Badi (croft) (Raipur – Bilaspur National Highway)	21500	11900
	2	From Haji Shakoor’s Farm House to New Ajmeri Hotel via Bus Stand (Raipur-Bilaspur National Highway)	24000	15000
	3	From New Ajmeri Hotel to Gajru Sen’s House via Bhatia Dhaba (motel)	26500	17200

4	From Bemetara Chowk (both sides), Bhatia Hotel and Shukla Hotel to the end of the ward. (Simga – Bemetara Road)	15500	9800

22. All the properties of the Appellants involved herein are situated in Ward No.13 (Kankalinpara Ward) and admittedly, the said properties are situated on the side of the main road. Since the agricultural properties on the side of the main road in Ward Nos. 12 & 13 are to fetch a market rate of 21500/- per sq.mt., as accepted by the Competent Authority itself to grant the compensation, whether the calculation effected in the case of the Appellants is correct, is the next question.

23. To resolve the issue in this regard, we find it appropriate to extract the relevant provisions of Annexure-P/16 Guidelines (Clause 3)

Verbatim English translation is as given below :

"3. Provision for calculation of market value of plots of agricultural land within urban areas of Nagar Panchayat :-

(One)	When area is more than or equal to 0.050 hectare	:	100% of the plot rate of that area
(Two)	When area is more than 0.050 hectare but less than or equal to 0.100 hectare	:	25% of the plot area of that area

Note :-1) In case of sale of agricultural land more than 0.100 hectare the market value shall be calculated for the total area in accordance with rate fixed for per hectare of the concerned area.

2) In case of sale of lands of more than one Khasara No. with the help of one document within Nagar Panchayat area, if the total area is more than 0.100 hectare, the evaluation of total area shall be done in accordance with the type of land in hectare.

Example :- In circumference of aforementioned slab, if 0.100 hectare agricultural land is sold out, then the market value shall be calculated in the following manner :-

(If value of any area is Rs.200/- per square meter, the rate shall be calculated in following manner)

(One) upto 0.050 hectare : 100 percent (506 sq.mt. x 200) = 101200

(Two) more than 0.050 hectare upto 0.100 hectare. : 25 percent (506 sq.mt x 50) = 25300

Total Market Value = 126500

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24. After specifying the way in which the compensation has to be fixed, with reference to the 'area/extent', it has been sought to the illustrated by giving an example. It is

very evident from the illustration, that in respect of a property having higher area/extent, valuation for the purpose of computation of 'stamp duty' has to be made separately for the different extents and added together. When the area is less than or equal to 0.050 hectare, 100% of the plot rate of that area has to be worked out/reckoned and when the area is more than 0.050 hectares, but less than or equal to 0.100 hectares, 20% of the plot rate of 'that area' is to be worked out/reckoned. Further, as per Note 1), where the land is more than 0.100 hectares, the market value shall be calculated for the total area as per the rate fixed 'per hectare' of the 'concerned area'. Here, the terms "that area" as mentioned in Sl.No. (two) of the Table under Clause '3' and the terms "concerned area" in Note 1) thereunder, only denote the differential area i.e. the remaining area already covered by the previous provisions i.e. Sl.No. (one) {where it is a case under Sl.No. (two)} and Sl.Nos. (one) & (two) {where it is a case covered by not Sl.No. (one)}. This itself gives a clear idea as to how the calculation is to be made, so as to arrive at the total market value of the property comprised in different segments under the very same head. Instead of effecting 'slabwise computation' of the market value and adding it together as above, the Competent Authority simply adopted the 'per hectare rate' to the property in question having a total exent of 1370 sq.mt., merely for the reason that it was above 1000 sq.mts. It ought to have been worked out separately i.e. compensation payable for the first 1000 sq.mts. at the 'circle rate' and in respect of the area beyond that, i.e. 370 sq.mts. at the 'per hectare rate' and adding them together, to arrive at the total market value of the land having an extent of 1370 sq.mt.

25. Similar terms as given in Clause '3' for determination of 'market value' under given contexts are specified in Annexure-P/16 Guidelines in respect of other cases – Clauses 1, 2, 4, 5 & 6 as well. In all cases, the Guidelines give examples as to how the calculation is to be made separately and to add them together, to fix the total 'market value'. This exercise has not been followed by the Competent Authority, but for effecting the calculation in just one go, at 'per hectare rate' as the property was having more than 1000 sq.mts. This resulted in the arbitrary and unintended consequence of resulting in higher compensation to a meagre extent of similar land, while granting only meagre compensation in respect of exactly similar land, having higher extent/area.

26. With regard to applicability of Clause '7' of Annexure-P/16 Guidelines, it reads as follows :

> "7– मुख्य सड़क से 20 मीटर की गहराई/दूरी तक स्थित भू–खण्डों को मुख्य सड़क से लगी मानकर मुख्य सड़क के लिये निर्धारित दर अनुसार प्रति वर्ग मीटर में बाजार मूल्य की गणना की जावेगी । परन्तु यह भी कि यदि कोई पक्षकार 20 मीटर की गहराई/दूरी से अधिक गहराई तक की भूमि क्रय करता है तब संपूर्ण भू–खण्ड को मुख्य सड़क से लगा हुआ मानकर बाजार मूल्य की गणना की जावेगी"

The above Clause clearly shows that the property, though not situated on the

side of the main road, but if located within 20 mtrs. will be treated as having the same value, as if it were situated on the side of the main road and the value will be calculated @ per sq.mt., as fixed for such properties having proximity to the main road, for the purpose of computing the stamp duty. The second limb of Clause '7' says that, even in a case where the party transects / purchases such land having a higher extent (which goes beyond 20 mtrs.), the market value will be fixed, treating the entire plot as situated on the side of the main road. It is only a provision to safeguard the revenue and nothing more.

27. This can be viewed from another angle as well. There is no dispute with regard to the credentials or the potential value of the property of the Appellants and the discrimination / classification is made only with reference to its higher extent, of being 1370 sq.mts., which made the Competent Authority to adopt the 'per hectare rate'. The Competent Authority has reckoned 'per sq.mt. rate' of Rs.21500/- in respect of exactly similar lands, where the land was having an extent of upto and less than 1000 sq.mts. There is no dispute for the Competent Authority that the Appellants would have obtained higher compensation at the 'per sq.mt. rate' of 21500/-, if it was of or less than 1000 sq.mts. as reflected from Annexure-A/3 Table (extracted already) paid to similar small extents of land. If the Appellants had conceded that they do not require any compensation for 370 sq.mts. (which is in excess of 1000 sq.mts.), the Appellants also would have obtained much higher compensation, than the extent as now awarded. As such, despite being in a better position with possession and ownership of exactly similar land of 1000 sq.mts. + something more (370 sq.mts.), the Appellants came to be denuded of getting their vested right for compensation for the first 1000 sq.mts. on the basis of 'per sq.mt. rate' of Rs.21500/-, besides the compensation payable for the additional / excess / differential extent of 370 sq.mts. at the 'per hectare rate'. This position alone has been demonstrated in the 'examples' given in Annexure-P/16 Guidelines, pointing out the necessity to work up the value separately under different slabs and to have them added together for fixing the total market value, to work out the stamp duty payable. This vital aspect was unfortunately omitted to be noted by the Competent Authority while applying the principle / guidelines in a wrong and misconceived manner. We are of the firm view that a 're-calculation' is necessary in the aforesaid lines, working out the market value slabwise i.e. at the rate of 21500/- per sq.mt. for the first 1000 sq.mts and at 'per hectare rate' for the extent beyond it; to be added together. We hold that the fixation effected by the Competent Authority is not correct or sustainable, being totally arbitrary and perverse in all respects.

9. On the submission of the inherent jurisdiction of review by the High Court while exercising the writ jurisdiction, the learned counsel for the review petitioner relied upon **1988 (2) SCC 602 (A.R. Antulay v. R.S. Nayak), 2005 (13) SCC 289 (Rajender Singh v. Lt. Governor, Andaman and Nicobar Islands), 1997 (7) SCC 123 (DCM Ltd. v. Municipal Corporation, Delhi), 2005 (4) SCC 741 (BCCI v. Netaji Cricket Club).** Relying upon these judgments, the contention of the learned counsel for the review petitioner was that the High Court while exercising the writ jurisdiction has got inherent powers wide enough with the scope of review as the High Court enjoys plenary powers. Learned counsel for the review petitioner also contended that the writ petition should had been not entertained by the High Court in the light of the alternative statutory remedy

under Section 3G(5) of the National Highways Act. It was canvased by the learned counsel for the petitioner that in the light of the aforesaid provisions of the National Highways Act, the matter ought to had been agitated by the petitioners by way of an appropriate arbitration proceedings and the Division Bench has therefore committed an error of law while entertaining and allowing the writ appeal.

10. In support of its contention the applicant/review petitioner relied upon **2020 (19) SCC 681 (CCT v. Glaxo Smith Kline Consumer Health Care Limited), 2021 (6) SCC 771 (Radha Krishan Industries v. State of H.P.), 2016 SCC OnLine MP 3659 (Harman Singh v. Union of India), 2019 SCC OnLine Delhi 7307 (Anubhav Chand Kathuria v. Union of India), 2022 SCC OnLine Bom 765, (Ganesh Nivrutti Ghadge v. State of Maharashtra), 2020 (15) SCC 161 (NHAI v. Sayedabad Tea Co. Ltd.**). In support of his contention, so far as the circle rates and guidelines having been framed under the Stamp Act are inapplicable in the determination of the compensation and in support of his contention the applicant relied upon **2018 (12) SCC 545 (UOI v. Savitri Devi).**

11. Having heard the contentions put forth on either side and on perusal of record, what needs to be considered at this juncture is the fact that the High Court while exercising of its writ jurisdiction thus have the power to review its order, however the power is subject to the limits which is otherwise prescribed or envisaged under Order 47 Rule 1 of the Code of Civil Procedure. The power so far as the scope of the High Court in a review petition or the extent of power this Court can exercise while hearing a review petition has in the recent past been discussed by the Hon'ble Supreme Court in quite a few cases and where the view of Hon'ble Supreme Court in this context is consistent.

12. Very recently in a case that has been decided by the three Judges bench of the Hon'ble Supreme Court in the case of "**Madhusudhan Reddy v. Narayana Reddy & others" Civil Appeal No. 5503-4 of 2022** and connected Civil Appeals in paragraphs No. 25 & 26 after dealing with the issue have in paragraphs No. 12 to 26 has held as under:

> **"25. In Ram Sahu (Dead) Through LRs and Others v. Vinod Kumar Rawat and Others (2020) SCC Online SC 896, citing previous decisions and expounding on the scope and ambit of Section 114 read with Order XLVII Rule 1, this Court has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the Section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order XLVII Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can appellate power be exercised in the guise of exercising the power of review.**
>
> **26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility**

of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as "for any other sufficient reason". The said phrase has been explained to mean "a reason sufficient on grounds, at least analogous to those specified in the rule" (Refer: Chajju Ram v. Neki Ram, AIR 1922 PC 112 and Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulose Athanasius and Others, 1955 SCR 520)."

13. Again in the recent past in a judgment rendered by the Hon'ble Supreme Court in the case of "**Shri Ram Sahu v. Vinod Kumar" 2020 SCC OnLine SC 896** had again dealing with the various judicial precedents on the scope of review in a writ jurisdiction in paragraph No. 33 after dealing with all the decisions on the topic has laid down the principles dealing with the powers of the Courts/Tribunal in the exercise of their power of review jurisdiction has held as under:

"33. xxxxxxxxxxx

35. The principles which can be culled out from the abovenoted 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 selfevident 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."

14. Further again in paragraph No. 34 the Hon'ble Supreme Court has held as under:

"34. 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. "

15. The Hon'ble Supreme Court in the case of "**Government of T.N. and others v. M. Ananchu Asari and others" (2005) 2 SCC 332** on a Review petition filed by the Government in paragraph No.3 held as under:

""3. Certain contentions are raised on the merits, especially, in regard to the conclusion of this Court that the process of absorption did not take place in 1975. We are not inclined to rehear the arguments on merits. If the petitioners failed to furnish the necessary material even during the pendency of appeal in this Court, that is no ground to review the judgment. There is also nothing to be clarified insofar as the operative part of the judgment is concerned. It is not necessary for us to express any view on the question whether the Transport Corporation employees who were erstwhile government servants retiring after 01.01.1988 would be eligible to get the pension in addition to the salary drawn by them in the Corporation, as per the Rules and GOs applicable to them. It is the contention of the learned counsel for the respondent employees that the GOs issued by the Government themselves contemplated such payment and in fact those who were parties to the earlier writ petitions were given that benefit. This issue cannot legitimately form the subject-matter of either review or clarification. Hence the review petitions are dismissed with the above observations. Time for implementation of judgment is extended by four

months from today."

16. A similar view was further reiterated by the Hon'ble Supreme Court in the case of "**Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. And others" (2005) 6 SCC 651** wherein in paragraph No.10 held as under:

> **"10. This Court has referred to several documents on record and also considered the documentary evidence brought on record. This Court on a consideration of the evidence on record concluded that the respondent had been denied power supply by the Board in appropriate time which prevented the respondent from starting the commercial production by December 31, 1996. This is a finding of fact recorded by this Court on the basis of the appreciation of evidence produced before the Court. In a review petition it is not open to this Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the Court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."**

17. Hon'ble Supreme Court in case of **Meera Banja (Smt.) vs. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170** has held that the error apparent on the face of record means such error of which entire record is not required to be looked into. Review petition cannot be a re-hearing of original proceeding by appreciating each and every fact and the law which is a jurisdiction of an appellate court.

18. Hon'ble Supreme Court in case of **Surendra Kumar Vakil & Ors. Vs. Chief Executive Officer M.P. & Ors, reported in (2004) 10 SCC 126** has held thus:-

> **"10. .....A point that has been heard and decided cannot form a ground for review even if assuming that the view taken in the judgment under review is erroneous."**

19. As regards the judgments which have been cited by the counsel for the applicant, the bare reading of the facts under which those judgments have been decided would clearly reflect that those decisions have been decided under entirely different contractual backdrop and are quite distinguishable on facts itself. The principles of law enunciated in those judgments cannot be applied in a straight jacket formula in the facts of the present case, particularly keeping in view the facts and circumstances of the present case, which led to the filing of the review petition as it would be clear that the judgment against which the review petition has now been filed has been after hearing all the parties to the dispute and is based upon material facts available from the pleadings itself.

20. The review petition therefore, does not have any merits. This Court is therefore inclined to dismiss the review petition on the ground that the scope of interference in the given facts and

circumstances and the grounds raised in the review petition not being sufficient enough for allowing the review petition and the same therefore deserves to be and is accordingly rejected. No order as to costs.

(P. Sam Koshy)

(Parth Prateem Sahu)

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