AFR

Court No. - 29
Case :- WRIT - C No. - 54341 of 2010
Petitioner :- D.P. Public High School Mirzapur
Respondent :- State of U.P. and Others
Counsel for Petitioner :- Ravi Agrawal,P.K. Chaurasia
Counsel for Respondent :- C.S.C.,Ramendra Pratap Singh,Suresh Singh

Along with

(1) **Case :-** WRIT - C No. - 55314 of 2011
Petitioner :- Santlal
Respondent :- State Of U.P. Thru Secy. And Others
Counsel for Petitioner :- Raj Kumar Shukla,Anil Kumar Shukla,Smt. Sarita Shukla
Counsel for Respondent :- C.S.C.,Suresh Singh

(2) **Case :-** WRIT - C No. - 56451 of 2011
Petitioner :- Kunwar Shalivahan Singh And Others
Respondent :- State Of U.P. Thru The Secy. And Others
Counsel for Petitioner :- Pankaj Govil,M.K.Gupta,Pankaj Agarwal
Counsel for Respondent :- C.S.C.,Suresh Singh

(3) **Case :-** WRIT - C No. - 7490 of 2012
Petitioner :- Smt. Rajwati And Others
Respondent :- State of U.P. and Others
Counsel for Petitioner :- Raj Kumar Shukla,Anil Kumar Shukla,Smt. Sarita Shukla
Counsel for Respondent :- C.S.C.,Suresh Singh

(4) **Case :-** WRIT - C No. - 20719 of 2013
Petitioner :- Sukhpal And 14 Others
Respondent :- State Of U.P. Thru Secy. And 3 Others
Counsel for Petitioner :- Raj Kumar Shukla,Smt. Sarita Shukla
Counsel for Respondent :- C.S.C.,Suresh Singh

(5) **Case :-** WRIT - C No. - 11159 of 2013
Petitioner :- Jagwati Devi Alias Vimlesh And Another
Respondent :- State Of U.P. Thru Secy. And Others
Counsel for Petitioner :- Raj Kumar Shukla,Smt. Sarita Shukla
Counsel for Respondent :- C.S.C.,Suresh Singh

(6) **Case :-** WRIT - C No. - 11157 of 2013
Petitioner :- Prempal And Others
Respondent :- State Of U.P. Thru Secy. And Others
Counsel for Petitioner :- Raj Kumar Shukla,Smt. Sarita Shukla
Counsel for Respondent :- C.S.C.,Suresh Singh

Hon'ble Mrs. Sunita Agarwal,J.
Hon'ble Vipin Chandra Dixit,J.

(Delivered by Justice Sunita Agarwal)

In Re: Civil Misc. (Review) Application No. 76758 of 2017 filed in Writ-C No. 11157 of 2013

In Re: Civil Misc. (Review) Application No. 76755 of 2017 filed in Writ-C No. 11159 of 2013

In Re: Civil Misc. (Review) Application No. 76750 of 2017 filed in Writ-C No. 20719 of 2013

In Re: Civil Misc. (Review) Application No. 76733 of 2017 filed in Writ-C No. 7490 of 2012

In Re: Civil Misc. (Review) Application No. 76728 of 2017 filed in Writ-C No. 56451 of 2011

In Re: Civil Misc. (Review) Application No. 76739 of 2017 filed in Writ-C No. 55314 of 2011

In Re: Civil Misc. (Review) Application No. 76745 of 2017 filed in Writ-C No. 54341 of 2010

1. Heard Sri Manish Goyal learned Senior Counsel assisted by Sri Praveen Kumar, Sri Kamaljeet Singh and Sri Suresh Singh learned counsels appearing for the respondent authority, Sri P.K. Chaurasia and Ms. Sarita Shukla learned counsels for the opposite parties/writ petitioners on the review applications related to the acquisition of the land of Village Mirzapur.

2. This bunch of review petitions is directed against the judgment and order dated 22.12.2016 passed by this Court in allowing seven writ petitions challenging acquisition notifications under the Land Acquisition Act, 1894, with the direction to the State to determine and pay compensation to the petitioners in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act, 2013"), treating the date of acquisition notification as 22.12.2016, same as the date of the judgment. The claim for compensation for constructions standing over the lands in question on the date of preliminary notification was also directed to be computed.

3. The aforesaid directions had been issued while holding that the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 were bad as the decision of the State Government for invoking power under Section 17(1) and 17(4) of the Land Acquisition Act, 1894, for invocation of the urgency clause, was without any material for invoking

such power. On the statement of the counsels for the writ petitioners, therein while noticing that no award had been made by the Special Land Acquisition Officer with reference to the notifications under challenge, placing reliance on the judgment of the Apex Court in **Sahara India Commercial Corporation Limited and others vs. State of Uttar Pradesh and others**[1] [Civil Appeal No. 11501 of 2011] decided on 30.11.2016, it was concluded that since the notifications for acquisition were held bad, the tenure holders were entitled for compensation under the Act, 2013.

4. Before going into the rival contentions of the counsels for the parties to examine the merits of the review petition, we would like to discuss the law pertaining to concept and scope of review so as to assess as to whether review is permissible in the facts and circumstances of the instant case.

Section 114 of the Code of Civil Procedure confers power of review on the Courts; it may be reproduced as under:-

> *"**Section 114. Review.** - Subject as aforesaid, any person considering himself aggrieved-*
>
> *(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,*
>
> *(b) by a decree or order from which no appeal is allowed by this Code, or*
>
> *(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."*

Order 47 Rule 1(1) of the Code of Civil Procedure, 1908 provides application for review of judgment which reads as under:-

> *"**Order XLVII Rule 1(1). Application for review of judgment:-***
> *(1) Any person considering himself aggrieved-*
>
> *(a) by a decree or Order from which an appeal is allowed, but from which no appeal has been preferred,*
>
> *(b) by a decree or Order from which no appeal is allowed, or*
>
> *(c) by a decision on a reference from a Court of Small Causes,*

1 (2017) 11 SCC 339

> *and who, 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 of for any other sufficient reason, desires to obtain a review of the decree passed or Order made against him, may apply for a review of judgment to the Court which passed the decree or made the Order."*

5. It is settled by a catena of decisions that review of an earlier order cannot be done unless the Court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. 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. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

In **Col. Avtar Singh Sekhon vs. Union of India and others**[2], it was held that a review is not a routine procedure. While relying on the previous decision in **Sow Chandra Kante and another vs. Sheikh Habib**[3], it was noted therein that:-

> *"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."*

In **Parsion Devi vs. Sumitri Devi**[4] while considering the ambit and scope of Order 47 Rule 1 CPC, referring to the earlier decision of the

2 1980 (Supp) SCC 562
3 (1975) 1 SCC 674
4 (1997) 8 SCC 715

Apex Court in **Thungabhadra Industries Ltd. vs. Govt. of A.P.**[5], it was noted in paragraphs '7' to '9' as under:-

> *"**7.** It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh (1965 (5) SCR 174 at 186) this Court opined:*
>
> > *'11. What, however, we are not concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occation that Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinct which is real, though it might not always be capable of exposition between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent." A review is by no means an appeal in disguise whereby an erroneous decision is reheard corrected. but lies only for patent error.'*
>
> ***8.** Again, in Smt. Meera Bhanjia Vs. Smt. Nirmala Kumari Choudhury (1995 (1) SCC 170) while quoting with approval a passage from Abhiram Taleshwar Sharma Vs. Abhiram Pishak Sharma & Ors. (1979 (4) SCC 389), this Court once again held that review proceedings are not by way of an appeal and have to strictly confined to the scope and ambit of Order 47 Rule 1 CPC.*
>
> ***9.** 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 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". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."*

In **Lily Thomas vs. Union of India**[6], it was observed in paragraphs '56' and '58' that:-

5 AIR 1964 SC 1372
6 (2000) 6 SCC 224

*"**56.** It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review........xxxxxxxxxxxxxx........................*

***58.** ....xxxxxxxx.................... The words 'any-other sufficient reason appearing in Order XLVII Rule 1 CPC' must mean 'a reason sufficient on grounds at least analogous to those specified in the rule' as was held in Chajju Ram v. Neki Ram AIR 1922 PC 112 and approved by this Court in Moron Mar Baseless Catholics and Anr. v. Most Rev. Mar Poulose Athanasius and Ors. AIR 1954 SC 526. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. in T.C. Basappa v. Nagappa and Anr. this Court held that such error is an error which is a patent error and not a mere wrong decision."*

The decision of the Apex Court in **Hari Vishnu Kamath vs. Ahmad Ishaque**[7] was noted in paragraph '58' of the aforesaid decision [**Lily Thomas** (supra)] to note that:-

*"**58. ………..xxxxxx………...23.** .....It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error and become art error apparent on the face of the record? ......xxxx………"*

All the above noted decisions have been taken note of by the Apex Court in **Kamlesh Verma vs. Mayawati and others**[8] to hold in paragraphs '17', '18' and '19' as under:-

*"**17.** In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of*

7 AIR 1955 SC 233
8 (2013) 8 SCC 320

evidence 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. This Court, in Kerala State Electricity Board vs. Hitech Electrothermics & Hydropower Ltd. & Ors., (2005) 6 SCC 651, held as under:

> *"10. ....In a review petition it is not open to this Court to reappreciate 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 14 amount to converting a review petition into an appeal in disguise."*

18. *Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in Jain Studios Ltd. vs. Shin Satellite Public Co. Ltd., (2006) 5 SCC 501, held as under:*

> *"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.*
>
> *12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of "second innings" which is impermissible and unwarranted and cannot be granted."*

__19.__ Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

The principles of review have been summarized therein, in paragraph '20' as under:-

"__20.__ Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

***20.1** When the review will be maintainable:-*

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record; (iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius & Ors., (1955) 1 SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275.

***20.2** When the review will not be maintainable:-*

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

> *(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
>
> *(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."*

6. The same view has been reiterated by the Apex Court in a reported decision in **Union of India vs. Sandur Manganese and Iron Ores Limited and others**[9] and it was stated therein that the error contemplated in the judgment under review must be one which is apparent on the face of the record.

It is settled that in review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction. In the review jurisdiction, the Court shall interfere only when there is a glaring omission or patent mistake or when a grave error has crept in the impugned judgment. The review applicant cannot be permitted to reargue the very same point.

7. In **Shanti Conductors Private Limited vs. Assam State Electricity Board and others**[10], the same view has been reiterated.

Referring to the decision of the Apex Court in **Parsion Devi** (supra), it was observed therein that the scope of review is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions, which have already been addressed and decided.

8. In **S. Murali Sundaram vs. Jothibai Kannan and others**[11], the Apex Court while considering the above noted decisions in **Shanti Conductors Private Limited** (supra) and **Perry Kansagra vs. Smriti Madan Kansagra**[12] has held that an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of

9 (2013) 8 SCC 337
10 (2020) 2 SCC 677
11 2023 SCC OnLine SC 185
12 (2019) 20 SCC 753

the record. The observation of the Apex Court in **Perry Kansagra** (supra) has been noted that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law.

After considering a catena of decisions on exercise of power of review and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC, the Apex Court has noted the principles summed up in **Perry Kansagra** (supra) as under:-

> *"(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.*
>
> *(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on the points where there may conceivably by two opinions.*
>
> *(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.*
>
> *(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.*
>
> *(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit."*

We may further note the decisions relied by the learned counsels for the parties to support their rival submissions.

9. The counsels for the opposite parties/writ petitioners have relied upon the decision of the Apex Court in **Pancham Lal Pandey vs. Neeraj Kumar Mishra and others**[13] to agitate that the power of review is not to scrutinize the correctness of the decisions rendered rather to correct the error, if any, which is visible on the face of the order/record without going

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into as to whether there is a possibility of another opinion different from the one expressed.

10. Learned Senior Counsel appearing for the review applicant relied on three decisions to support his submissions that in the facts and circumstances of the instant case, review is permissible.

11. The decision of the Apex Court in **Board of Control for Cricket in India vs. Netaji Cricket Club and others**[14] has been placed before us to submit that under Order 47 Rule 1 of the Code, the application for review is maintainable not only upon the discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for "any other sufficient reason". The mistake on the part of the Court may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*".

It was argued that the rule of limitation on the power of review is not universal. The observation of the Apex Court in **Lily Thomas** (supra) in paragraph '52', as noted in para 92 of the aforesaid judgment in **BCCI** (supra) has been placed before us to assert that if the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error.

Relevant paragraph '52' in **Lily Thomas** (supra) extracted in **BCCI** (supra) is noted hereinunder:-

14 (2005) 4 SCC 741

> *"**52.** The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error."*
>
> *(emphasis supplied)*

12. Reliance has further been placed upon the decision of the Apex Court in **Rajendra Singh vs. Lt. Governor, Andaman & Nicobar Islands and others**[15] to argue that the law is well-settled that the power of judicial review of its own order inheres in every Court of plenary jurisdiction which extends to correct all errors to prevent miscarriage of justice. The Court should not hesitate to review their own earlier order when there exists an error on the face of the record and the interest of the justice so demands in appropriate cases. It was argued that in the facts of the said case, the Apex Court had noted that the High Court in original judgment had erred in overlooking the documents relied on by the parties. The review jurisdiction, thus, was held to be available in the facts of that case as the original judgment was found to be a clear case of an error apparent on the face of the record and non-consideration of relevant documents. It was, thus, vehemently urged that in a case where several vital issues were raised and documents placed, the High Court fell in error in not considering the same, the review jurisdiction would have to be invoked to correct the error. It was noted by the Apex Court therein that

15 (2005) 13 SCC 289

the original judgment which did not deal with and decide many important issues which on proper consideration may justify the claim of the appellant therein, was liable to be reviewed in exercise of the inherent power of the High Court to prevent miscarriage of justice.

13. Third decision of the Apex Court relied by the learned counsel for the appellant is **Krishna Nand Shukla vs. Director of Higher Education, Allahabad and others**[16] to urgue that the Apex Court has taken exception to the order of the High Court in rejecting the review application by a non-speaking order. The order of dismissal of the review application, thus, has been set aside and the matter was remitted to the High Court to decide the same afresh on the basis of the pleadings on record. While doing so, the Apex Court had gone into the merits of the claim of the parties to reach at the conclusion that the High Court has erred in overlooking the facts of the appellant's case and pleadings made therein. The error committed by the High Court in deciding the writ petition was though brought to the notice of the Court by filing a detailed review application but the same was dismissed by a non-speaking order without adverting to the specific grounds raised in the review application. It was held therein that the judgment of the High Court without referring to the pleadings in the writ petition, i.e. pleadings in the counter affidavit and rejoinder affidavit, cannot be upheld.

14. Having noted the legal principles laid down by the Apex Court on the scope and ambit of review jurisdiction under Section 114 readwith Order 47 Rule 1 CPC, we are proceeding to note the arguments of the learned counsels for the parties to analyse the same in the facts of the instant case.

15. Placing the judgment under review, learned Senior Counsel for the review applicant would submit that only few facts of the case were noted and discussed by the Court therein to arrive at the conclusion that no facts existed before the State Government for invoking the powers under

16 (2019) 14 SCC 365

Sections 17(1) and 17(4) of the Land Acquisition Act, 1894. The invocation of urgency provision could not be justified by the State and, as such, the notifications under Section 4 and 6 of the Land Acquisition Act were held to be bad. The only factors which were taken into consideration by the Court to reach at the aforesaid conclusion are being noted hereinunder:-

(i) The communication between Development Authority, the State and the District Magistrate recording satisfaction with the requirement of dispensation of opportunity of hearing and exercise of powers under Section 17;

(ii) An office note dated 5.5.2010 giving justification for invocation of urgency.

It was argued that the recital of facts in the above noted documents were noted by the Court to arrive at the conclusion that only reasons assigned for dispensing with the opportunity of hearing to the farmers as per the office note dated 5.5.2010 were:- (i) that there was likelihood of encroachment of the land which was proposed to be acquired; (ii) that opportunity of hearing may delay the execution; (iii) that there was recommendation of the District Magistrate for exercise of powers under Section 17 of the Act.

16. Noticing the above, the Court had reached at the conclusion that the above noted three reasons were legally not sustainable for invoking the urgency as:- (i) The petitioners were in possession of the land holding the question of any encroachment/occupation did not arise; (ii) The report submitted by the District Magistrate/Development Authority did not reflect upon any such fact; (iii) Opportunity of hearing as contemplated under Section 5 provides for a period of 30 days in the matter of filing of objection. The objection so filed could always be decided by the Authority concerned within a reasonable time and if the authority itself is unable to decide the objection, it was not open for the State to contend that such

opportunity of hearing should not be afforded as it will delay the acquisition.

The opinion drawn by this Court was that the very purpose of Section 5 of the Land Acquisition Act would be frustrated if for the lapse on the part of the authorities, in not deciding the objection within the reasonable time, compliance of Section 5 of the Act could be avoided. The District Magistrate in his letter dated 5.3.2010 (noted in the decision) did not disclose any reason for invocation of the urgency clause and merely stated that he was satisfied with the proposal for invocation of the power under Section 17.

17. Having stated the above, the Court in the original judgment has proceeded to note the observations of the Apex Court in the case of **Radhey Shyam (Dead) Through Lrs. and others vs. State of U.P. and others**[17] in paragraphs '55' to '59' to arrive at the final conclusion of the acquisition notifications being bad for the reason that there was no justification for invocation of urgency clause.

18. Placing the above recital in the original judgment, it was argued by the learned Senior counsel for the review applicant that none of the factual aspects of the matter brought on record by means of the counter affidavit had been looked into. The judgment did not deal with and decide the important and vital issues in the case. The mistakes in the original judgment pointed out by the learned counsel for the review applicant are:-

(i) the nature of the project, the purpose of acquisition and the Master Plan had been completely ignored while relying on the decision of the Apex Court in **Radhey Shyam** (supra) to hold that invocation of urgency clause under Section 17(4) of the Land Acquisition Act in the instant case, where the land was proposed to be acquired for the purpose of Planned Development in favour of the Development Authority, was unwarranted.

17 2011 (5) SCC 553

(ii) The recital in the counter affidavit that the Industrial Development Area was divided into various sites for the use as set out in the Master Plan and the land use within the Industrial Development Area was not merely Industrial but included Residential, Commercial, Industrial, Institutional, Greens, Amenities and such other uses as mentioned in the Development Plan, had been completed ignored.

(iii) In the counter affidavit, it was submitted that the request for acquisition of the land was made by the Authority for planned development in the area of Village Mirzapur, in terms of the Master Plan. In the justification for urgency made for the acquisition, it was stated that the lands adjoining Village Mirzapur had either been acquired in the past or the proceeding for acquisition of adjoining land was in process. In order to maintain the continuity of infrastructural services, there was urgency to acquire the plots in question. The land of which the acquisition was proposed under the notification in question, would, interalia, be utilized for infrastructure like roads, sewage, electrification, education, medical facilities, trade and commerce, residence.

(iv) The statement in the counter affidavit justifying the invocation of urgency was that when a large chunk of land was being acquired, it will involve number of farmers going through the normal procedure (without invocation of urgency clause) and it would take years and years to invite, hear and dispose of the objections, verbal or written followed by Court cases, which in turn would further be very time consuming. On account of the delay, the very purpose of acquisition of the land would be defeated and frustrated. It was stated that if the land was not immediately made available, it would possibly affect the industrial/infrastructural growth of the State. Encroachment may also adversely affect the concept of planned development.

(v) Further statement about the proposed use of the land in particular under the notifications in question was that the said land would be used for residential plots scheme launched in the year 2009 (first

phase). On the publication of the scheme there was overwhelming response of the people in the locality and, as such, it was decided to increase the number of plots by acquiring more area. It was also pointed out that under the said scheme, 17% plots out of the total available plots were reserved for farmers of the villages of District Gautam Budh Nagar. The land which fall under the notified area of Yamuna Expressway Industrial Development Authority had either been acquired or directly purchased by the Authority. The land acquisition, in the above circumstances was urgently required.

(vi) All the above materials indicating urgency were placed before the State Government upon which it had recorded subjective satisfaction for arriving at a conclusion of invocation of urgency provision dispensing with the enquiry under Section 5A of the Act, 1896.

(vii) It was also brought on record that under the impugned notifications, 55.2023 hectares of the lands were acquired, out of which possession of 36.7810 hectares had been taken and transferred to the Development Authority on different dates. As many as 218 persons were affected by the notifications in question and 110 persons had received compensation under the Agreement Rules, 1997.

(viii) On the acquired land, roads, drainage works, sewerage works, supply of drinking water, electrification, parks, etc. are to be developed by the Authority during the course of development. The village development, sewerage, drainage, road, water supply, electrification of the village in question would also be undertaken. Out of the estimated cost of Rs. 4546.53 lacs, Rs. 3475.94 lacs had already been spent on road, sewerage, drainage, village development, electricity etc. in the area.

(ix) Under the scheme of the Development Authority, 7% of developed plots would be allotted to the original affected tenure holders of the village, allotment of which was under process.

(x) The lands of Village Mirzapur had been acquired through

different notifications and for different uses like the Yamuna Expressway Project, land for area under Master Plan road, area under Master Plan green, Abadi and Abadi settlement. Out of the total acquired area under the notification in question, Sector 18, Sector 20, Sector 22A & Sector 22D, Sector 19 are being developed, land use for which was residential, which included Green area, Sector road and area under township plots, including area under residential plots.

(xi) The acquisition of land of Village Mirzapur for Yamuna Express Way project has been upheld by the Apex Court in **Nand Kishore Gupta and other vs. State of U.P. and others**[18], wherein the Apex Court had observed that creation of the five zones for Industry, Residence, Amusement etc., would be complementary to the creation of the Expressway. It was observed that the creation of land parcels would give impetus to the industrial development of the State creating more jobs and helping the economy and thereby helping the general people. There can be no doubt that the implementation of the Project would result in coming into existence of five developed parcels/centers in the State for the use of the citizens., which would result in planned development of otherwise industrially backward area. The creation of these parcels will certainly help the maximum utilization of the Expressway and the existence of an Expressway for the fast moving traffic would help the industrial culture created in the five parcels. It was, thus, held therein that both will be complementary to each other and can be viewed as part of an integral scheme. It was, thus, held therein that Yamuna Expressway Project, which comprises of Yamuna Expressway as well as parcels of land for development for industry, residence, amusement etc., was complementary to the creation of the Expressway. The scheme being of mixed use around the Expressway cannot be viewed in isolation. The development of area along with the Expressway would be complementary to each other.

(xii) Placing the Master Plan before us, it was submitted that the

18 (2010) 10 SCC 282

land in Village Mirzapur lies in the midst of the scheme and Yamuna Expressway is cutting across the said village.

19. Placing the above statements from the counter affidavit filed in one of the writ petitions pertaining to the acquisition in question of Village Mirzapur, it was argued by the learned Senior Counsel for the appellant that none of the above noted pleadings of the respondents had been noted nor dealt with by this Court in the exercise of power of judicial review in the matter of invocation of urgency clause, which is limited to the decision making process and not to the decision itself. The conclusion drawn by the Court in the original judgment (under review) that no facts existed before the State Government for invocation of the power under Sections 17(1) and 17(4) was in ignorance of the above noted material on record. It is a clear case of non-consideration of the relevant documents and the decision rendered in ignorance of the material on record which on proper consideration may justify the claim of the review applicant. There exists, thus, an error apparent on the face of the record and the interest of justice demands to correct the said error. The decision has resulted in causing immeasurable loss and injury to the review applicant.

20. It was vehemently urged that the judgment rendered by the High Court in exercise of power under Article 226 of the Constitution attains finality and no appeal as a matter of right is permissible. The appeal to the Supreme Court is maintainable only on the leave of the Court. The remedy of review under Section 114 of the Code of Civil Procedure is a substantive remedy and the High Court having inherent power of review being the Court of plenary jurisdiction may exercise this power to prevent miscarriage of justice, in the facts and circumstances of the instant case.

21. The language of Section 114 CPC has been placed before us to argue that review is permissible in both eventuality (i) where an appeal against the decree and order is allowed by the Code but no appeal has been preferred; and (ii) where no appeal is allowed by the Code.

It was argued that Section 114 CPC empowers a Court to review its own order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in Section 114 in terms whereof it is empowered to make such order as it thinks fit [Reference was made to the decision of **BCCI** (supra)].

It was argued that in the instant case, as no appeal can be preferred as a matter of right nor any such appeal has been preferred by the review applicant and the appeal, if any, preferred to the Apex Court would be entertainable only on the question of law that too with the leave of the Court. The substantive power of review under Section 114 CPC, thus, may be exercised in the interest of justice, to correct the mistake of the Court which caused irreparable injury to the review applicant. It was submitted that it is a case of substantive review to correct the error apparent on the face of the record for ensuring the ends of justice and not of subjective review where the Court may form a different opinion on the same subject. If the judgment does not discuss any fact or ignore the material on record, the review applicant cannot be left remediless as the remedy of appeal, in the instant matter, is not available as a matter of right.

It was argued that the Court in the original judgment though noted the arguments made by the Counsel for the Development Authority and the State that the land was gradually being acquired by the State on proposal submitted by the Development Authority for planned development including the construction of residential colonies and that from the material on record, it cannot be said that there was no urgency so as to invoke the provisions Section 17 of the Land Acquisition Act. It was argued and also noted by the Court that the Development Authority had made huge investment for the development of the area running into hundreds of lacs and, in case, the notifications were set aside by the Court public money would go waste. However, the above noted arguments were

not dealt with by the Court and only a passing remark was made while dealing with the same in holding that no fact existed before the State Government for invoking the urgency clause.

22. It is submitted that for a large area of the total acquired land, the award was made by consent under the Agreement Rules, 1997 and for the remaining, the award under Section 11(1) was made. Tenure holders had accepted the award and did not challenge the determination. The issues relating to the acquisition for a major chunk of land under notification had been settled. The investment made by the Development Authority for development of the area during the interregnum and the details brought on record of the counter affidavit had been completely ignored. Vesting was complete with the possession memo dated 3.11.2010 and out of total 4 notifications of acquisition of lands in Village Mirzapur, only notification dated 13.5.2010 under Section 4 and declaration dated 28.7.2010 under Section 6 for an area of 55.2023 hectares in Village Mirzapur, was subjected to challenge.

23. The contention, thus, is that the exception taken by the Court to the subjective satisfaction recorded by the State Government for invocation of urgency was a result of overlooking the relevant material such as Master plan, nature of the project, purpose of acquisition, challenges in providing opportunity of hearing to the tenure holders of a large chunk of land and the urgent need of the land for phased development of the Industrial Area within the jurisdiction of the Development Authority. The subjective satisfaction recorded by the State Government could have been reviewed only upon taking the wholesome view on consideration of the entire material on record.

24. Lastly, it was argued that the fact recorded in the original judgment under review that no award had been made by the Special land acquisition officer with reference to the notifications under challenge was incorrect information supplied to the Court, which had resulted in issuing direction to pay compensation to the tenure holders by redetermining the same on

the basis of the provisions of the Act, 2013.

25. It was submitted that in the instant case, that out of total 55.2023 hectares of acquired land under the notification in question, possession of 36.7810 hectares had been given to the authority, out of which, the award under Section 11(2) for an area of 18.6990 hectares was made on 13.3.2012 and for an area of 3.9044 hectares on 13.12.2013; for an area of 0.5250 hectares on 31.12.2013. The award under Section 11(1) for an area of 13.6525 hectares was made on 31.12.2013. As the possession of only an area of 36.7810 hectares was taken and, as such, award under Sections 11(1) and 11(2) of the Act, 1894 was made only for the said area. The said facts were brought on record by means of the supplementary counter affidavit dated 15.12.2016 filed by the Authority. It was categorically stated therein that the possession of 18.4213 hectares of land was not taken by the State and, as such, was not handed over to the Development Authority. There was, thus, no question of making award for the said area, the land of the petitioners herein is also included in the aforesaid area of 18.4213 hectares. The result is that most of the affected tenure holders had received compensation and award under Section 11(1) of the Act, 1894 was required to be made only for a small area.

It was, thus, argued that once the issues relating to acquisition had been settled in the larger public interest, interference by this Court in ignorance of correct and complete facts already on record had resulted in unsettling the otherwise settled possession. The development of the area is being badly affected because of the judgment under review.

26. In the end, it was submitted that by the Government Orders dated 29th August, 2014 and 4.11.2015 issued by the State Government, to balance the equities, considering the grievances of the tenure holders pressed through their representatives viz-a-viz the affected allottees due to the interference made by this Court, it was decided that 64.7% of additional compensation would be paid to the affected tenure holders "as no litigation bonus". It was further decided that "no litigation bonus"

would also be paid to the farmers on withdrawal of 80% of the writ petitions relating to the acquisition proposals wherein the land is to be utilized for infrastructural project such as road, sewer, electrification, water supply and electronic manufacturing cluster etc. The submission, thus, is that grievance, if any, of the tenure holders in the matter of determination of compensation was also addressed by the State Government by providing additional compensation to the affected farmers.

27. With the above submissions, it was submitted by the learned Senior Counsel for the review applicant that this is a fit case for invocation of power of review inherent in this Court to make correction of its mistake. The review applications are, thus, deserve to be allowed.

28. In rebuttal, it was urged by the learned counsels appearing for the opposite parties/review applicants/writ petitioners that the State, decision of which has been found to be bad in invocation of urgency clause by this Court, has not filed the review, the review application has been filed only by the Development Authority. Moreover, under the garb of review, the applicant is trying to challenge the correctness of the decision of this Court. The power of review is limited and it has to be exercised within the framework of Section 114 readwith Order 47 Rule 1 CPC. The correctness of the decision cannot be seen and only an error apparent on the face of the record could be corrected in the exercise of power of review. In the facts of the instant case, this Court has reached at a definite conclusion that no fact existed before the State Government to invoke the urgency clause and the reasons found on the record justifying invocation of urgency were held to be legally not sustainable. In the facts and circumstances of the case, exercise of power of review would require appreciation of evidence on record to find out the mistake in the judgment which is wholly within the domain of the appellate court and review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. The mere possibility of two

views on the subject cannot be a ground for review. The power of review can be exercised only for correction of mistake and not to substitute a view. It is wholly unjustified to re-write a judgment by which the controversy has been decided.

Analysis

29. Having noted the legal principles pertaining to exercise of power of review, the facts and circumstances of the instant case and the original judgment (under review), we may record, at the outset, that the review application has been filed only by the beneficiary namely the Yamuna Expressway Industrial Development Authority. The acquisition of the land in question was made by the State Government taking decision for invoking the provisions of Section 17(1) of the Land Acquisition Act, 1894, on the proposal submitted by the Development Authority. The communications between the Development Authority and the State Government had been noted by the Court in the judgment under review to further go through the record produced by the State Government to justify its decision by recording satisfaction for invocation of urgency. The reasoning given in the report of the District Magistrate and placed before the State Government as extracted in the note prepared by the concerned Secretariat had been recorded and dealt with by the Court to arrive at the conclusion that they were legally unsustainable for invoking the urgency provisions. The law relating to the justification for invocation of urgency clause as propounded by the Apex Court in **Radhey Shyam** (supra) has been considered and finally the Court reached at a conclusion that no facts existed before the State Government for invoking the powers under Section 17(1) read with Section 17(4) of the Land Acquisition Act, 1894. Resultantly, the acquisition notifications were held bad.

30. When we consider the view taken by the Court in the judgment under review on appreciation of the material placed before it, in light of the material on record of the counter affidavit and supplementary counter affidavit noted above, at the first blush, though it seemed to us that the

original judgment having been rendered in ignorance of the above placed material on record is liable to be reviewed by invoking the inherent power of substantive review of this Court but on a deeper scrutiny, we are of the considered view that exercise of such a power would result in exceeding the limited power of review, inasmuch as, for exercise of power of review, we would be required to re-appreciate the evidence on record to arrive at a decision whether a mistake has been committed by the Court in the original judgment.

31. It is not a case where it can be said that the material considered by the Court in the judgment under review (original judgment) were extraneous to the case or irrelevant to the controversy. It is not a case where it can be said that even after appreciation of the material, allegedly ignored by the Court in the judgment (under review), the view taken by the Court in the judgment (under review) is not a possible view. Mere possibility of another view on the subject, as is well settled, cannot be a ground for review. It is well settled that error apparent on the face of the record should not be an error which has to be fished out and searched. To review the original judgment, we would be required to go through the entire material placed before us from the counter affidavit (noted above) to reach at the conclusion as to whether there is an error in the decision, to arrive at a finding that there was no justification of invocation of urgency clause. The error pointed out cannot be said to be error apparent in the decision made in clear ignorance or disregard of provisions of law. An allegedly wrong decision, cannot be corrected in exercise of power of review. The review is permissible only when one view was possible. If the view adopted by the Court in the original judgment is a possible view with reference to what record states, it is difficult to hold existence of an error apparent on the face of the record (Reference **Kamlesh Verma** (supra).

32. It is settled that a rehearing of the matter is impermissible in law within the scope of review. A repetition of old and overruled argument

cannot be considered to reopen concluded adjudication. The review is not maintainable when the same relief sought at the time of argument has been negatived. In the case of **Perry Kansagra** (supra), the Apex Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the review Court does not sit in appeal over its own order. The power of review can be exercised for correction of a mistake but not to substitute a view. Such power can be exercised within the limits of the statute dealing with the exercise of power. It is wholly justified to re-write a judgment by which the controversy has been finally decided on the ground that the decision was erroneous on merit. The error on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on the points where there may conceivably be two opinions.

33. In **Shanti Conductors Private Limited** (supra), it was observed and held that scope of review under Order 47 Rule 1 CPC readwith Section 114 CPC is limited and under the guise of review, the applicant/petitioner cannot be permitted to re-agitate and re-argue questions which have already been addressed and decided. It is further observed that 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 fact of the record. In **Rajendra Kumar and others vs. Rambhai and others**[19], dealing with the maintainability of the review application, it was observed by the Apex Court that the limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining the review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will led to failure of justice. In absence of any such error, finality attached to the judgment/order cannot be disturbed.

19 (2007) 15 SCC 513

34. There is one more aspect of the matter. This review application filed by the Development Authority is being argued by the learned Senior Advocate who has now been entrusted to appear for the respondent-Development Authority. It seems that most of the material so assiduously placed before us from the pleadings on record and the perspective brought before us in the matter of invocation of urgency, had not been brought to the attention of the Court passing the original judgment. The arguments of the then Counsel noted in the original judgment though had been placed before us to assert that the points urged were not dealt with but it cannot be found that assiduous arguments placed before us from the material on record were placed before the Court passing the original judgment and ignored. There cannot obviously be any such statement in the review application as the same had been filed through a different counsel. Moreover, the controversy cannot be said to admit of only one out of two or more views canvassed on the point.

35. In light of the above discussion in view of settled legal position on limitation on the power of review, we are further required to go through the decisions relied by the learned Senior Counsel for the review applicant.

36. Heavy reliance has been placed on the decision of the Apex Court in **BCCI** (supra), as noted above, to argue that an application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*", to correct the mistake on the part of the Court. The words "sufficient reason" in Order 47 Rule 1 CPC are wide enough to include a misconception of fact or law by a Court. Having gone through the said decision, we find that in that case, challenge before the Apex Court was to the interim order passed by the Division Bench of the High Court on the review application noticing that they had been misled by the undertaking given on behalf of the respondent therein, it was noted by the Division Bench that undertaking across the Bar given by the counsel appearing on behalf of the Board had not been given effect to in its letter

and spirit.

It was argued by the learned counsel for the respondent-Board therein that the undertaking given by the learned counsel for the appellant Board before the Division Bench was in consonance with the contention raised in the memo of appeal itself which had been duly recorded and the said undertaking having not been violated, the application for review was not maintainable.

In those facts and circumstances of that case, it was noted by the Apex Court that indisputably an undertaking had been given by a learned counsel appearing on behalf of the Board and in the interim order passed by the High Court in the review matter, the Bench before whom such undertaking had been given had expressed an opinion that it was misled. It was, thus, noted that the Apex Court having regard to the understanding of such undertaking by the Division Bench of the High Court, it did not intend to deal with the effect and purport thereof, as it was of the opinion that the Division Bench of the High Court itself was competent therefor.

In light of the above facts, it was observed by the Apex Court therein that a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. And an application for review would also be maintainable if there exists sufficient reason therefor. It was, however, noted that what would constitute sufficient reason would depend on the facts and circumstances of the case.

In light of the above, we find that the narration of law relating to exercise of power of review in **BCCI** (supra) in paragraph nos. ‘89’ & ‘90’ upon which heavy reliance has been placed by the learned Senior Counsel for the review-applicant, had been made in the facts and circumstances of the said case. No such fact or circumstances could be found in the instant case. The view in **BCCI** (supra) having been expressed in the facts and circumstances of the given case is of no benefit

to the review-applicant herein.

37. Another decision in **Rajendra Singh** (supra) relied by the learned Senior Counsel for the review-applicant pertains to a dispute relating to regularization of services of the appellant therein and denial of the award of Senior scale and Selection grade. On the appeal preferred by the respondent before the High Court, the order of the Tribunal directing for giving seniority to the appellant therein and granting senior scale as also all other consequential service benefits, had been set aside. The review application filed by the appellant therein was also rejected by another Division Bench of the High Court.

In these circumstances, the appellant had approached the Apex Court and it was noted therein that the High Court had committed an error of law by overlooking the documents relied by the appellant pertaining to fulfillment of conditions for grant of Senior scale and Selection grade particularly the documents showing bias on the part of the members of the Screening Committee and the discrimination and harassment to which the appellant had been subjected to. The letter regarding the service benefit including the seniority to which the lecturers were entitled to after the regularization of their services from the initial date of their adhoc appointment had been overlooked. The letter of UGC regarding the relaxation of refresher course was also ignored.

In light of the above facts and circumstances, it was held by the Apex court that a careful perusal of the judgment under review indicated that it did not deal with and decide many important issues which were raised in the ground of Special Leave Petition/appeal as also as the ground of review. The High Court was not justified in ignoring the material on record which on proper consideration may justify the claim of the appellant. The High Court was not correct and overlooking the documents relied on by the parties.

It was, thus, held that the judgment under review was a clear case

of error apparent on the face of the record and non-consideration of the relevant documents and the High Court being a Court of plenary jurisdiction had inherent power to prevent miscarriage of justice by exercise of power of judicial review of its own order. It was observed the review power extends to correct all errors to prevent miscarriage of justice and the Court should not hesitate to review to their own earlier order when there exists an error on the face of the record and the interest of justice so demands in appropriate cases.

Having noted the facts of **Rajendra Singh** (supra), we find that the observation made therein was with regard to the scope of review in the facts and circumstances of the said case and is not of any benefit to the review applicant herein, in the facts of the instant case.

38. The last decision relied by the learned Senior Counsel for the review applicant is **Krishna Nand Shukla** (supra), wherein the appellant's case was to seek writ of mandamus commanding the respondents therein to pay salary on month to month basis as Lecturer Military Science and not to interfere in its functioning as such. The appellant started getting salary under the interim order passed by the Court, a counter affidavit was filed by the contested respondents wherein the claim of the appellant was refuted and it was mentioned that the claim of the appellant had already been rejected by an order passed subsequent to the filing of the writ petition. It was pleaded that although the appellant therein claimed his appointment as adhoc lecturer in Military Science on 2.8.1991 but the post for Military Science was created only on 9.2.1996. The State had no liability to pay salary in view of the provisions of the U.P. State University Act, 1973. It was also pleaded that the petitioner therein was not appointed following the due procedure. The writ petition was dismissed by the Division Bench of the High Court referring to the paragraphs of the counter affidavit and rejoinder. A review application was filed which was dismissed by the High Court by a non-speaking order. The Apex court had taken exception to the act of the High Court in

rejecting the review application by passing an order which was non-speaking, wherein the grounds taken in the review application were not dealt with. It was noted by the Apex Court that the appellant therein had taken a categorical stand that the paragraphs of the counter affidavit and that of the rejoinder, which were referred to and relied on by the High Court for dismissing the writ petition were not present in the counter affidavit filed to the writ petition of the appellant and the rejoinder affidavit filed by the appellant. The copy of the counter affidavit was brought on record of the Special Leave Petition and it was noted by the Apex Court that there was no such paragraphs which were noted in the order under review. The statement from the paragraphs of the rejoinder which was noted by the High Court was different.

The review application in the said case, was filed before the High Court on a liberty granted by the Apex Court in the Special Leave Petition. In the said circumstances, rejection of the review application by the High Court by a non-speaking order was held to be bad. The said judgment having been passed in the facts and circumstances of that case noticing that the judgment and order under review was passed in ignorance of the pleadings on record, cannot come to the rescue of the review applicant herein.

39. For the above discussion, we are of the considered opinion that though it can be argued by the counsel for the review applicant that some material such as Master plan, the nature of the project, the land use of the acquired land were not taken into consideration by the Court in the original judgment (under review), however, consideration of the said arguments would require us to appreciate the material on record which was allegedly ignored by the Court in the original order and the said exercise of re-hearing being impermissible within the scope of review, we do not find any good ground to exercise the power of review conferred upon us, in the facts and circumstances of the instant case. The judgment and order of this Court under review having attained finality between the

parties, in case of any mistake on the part of the Court in ignoring the pleadings on record and arriving at a different conclusion by considering the other material on record, only remedy before the review applicant was to approach the Apex Court placing the alleged wrong in the judgment under review.

In view of the above, the review applications are **dismissed** being beyond the scope of review under Order 47 Rule 1 readwith Section 114 of the Code of Civil Procedure.

(Vipin Chandra Dixit,J.) **(Sunita Agarwal,J.)**

Order Date :- 5.5.2023
Brijesh