HIGH COURT OF GUJARAT (*D.B.*)

HARENDRRAKUMAR NATWARSINHJI
Versus
STATE OF GUJARAT

Date of Decision: 23 March 2007

Citation: 2007 LawSuit(Guj) 680

Hon'ble Judges: R S Garg, D H Waghela

Case Type: Civil Miscellaneous Application; Special Civil Application

Case No: 614 of 2007; 4351 of 1990

Final Decision: Petition dismissed

Advocates: Harin P Raval, Nanavati Associates, L R Pujari

Cases Referred in (+): 2

D. H. WAGHELA

[1] The applicant has, through his Power of Attorney, made this application with a prayer to review and/or recall the judgement and order dated 3rd November, 2006 rendered in Special Civil Application No.4351 of 1990, and pending admission and hearing, restrain the respondents from taking possession of the property of Natwar Palace Complex and stay further proceedings of Land Ceiling Case No.25 of 1976.

[2] The short order sought to be reviewed reads as under:

> "After arguing the matter at some length, learned Counsel for the petitioner fairly conceded that the issues sought to be raised and the challenges sought to be levelled in the petition or by way of proposed amendment which was rejected were squarely covered by the Division Bench of this Court in Special Civil Application No.1290 of 1983 in the case of Khachar Godabhai Pithubhai & Ors. v. The State of Gujarat, reported in 2004 (2) GLH 589, and no ground was made out to take a different view. Therefore, the petition was required to be dismissed in terms of the ratio of the aforesaid judgement. Accordingly, the petition is dismissed, Rule is discharged and interim relief is vacated with no order as to costs."

[3] It is stated in the application and canvassed by learned Advocate, Shri H.P. Raval, appearing for the applicant, that the concession was made by learned Advocate, Mr. Upadhyay, who appeared for learned Senior Advocate, Mr. N. D. Nanavati in the original petition, on the basis of a misconception about the other points, which were urged in the main petition. It had escaped the notice of the applicant's Advocate that the other issues had also arisen in the above petition and, under the misconception of law, they were conceded to have been covered by the judgement, as aforesaid. In paragraph 9 of the application, it is averred on oath that:

> "None of the above-stated issues though arising and urged in the said petition in his favour can be said to be covered by the above-referred judgment of a Division Bench of this Hon'ble Court referred to in the order of this Hon'ble Court dated 3.11.06. While tendering unconditional apology to this Hon'ble Court, the applicant submits that it is under the misconception that the concession by Shri Upadhyay for the applicant has been recorded that the issues/challenges sought to be raised as referred in the petition or by way of the proposed amendment, which was rejected, were squarely covered by a Division Bench decision referred to in the order of this Hon'ble Court disposing of the present petition."
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> It is further stated in paragraph-11 that:
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> "Affidavit in support of this application by the applicant is filed. In addition thereto, affidavit of learned advocate Shri Upadhyay that it was under his own misunderstanding/misconception that the concession was tendered to this Hon'ble Court, is also filed separately."
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> It is stated in the affidavit of the learned Advocate, Shri Chitrajit Bharatbhai Upadhyay that:
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> "I was under the bona fide impression and mistaken belief that all points and challenges raised in the writ petition were covered by the judgment and order rendered in Special Civil Application No.1290 of 1983 and therefore, I had conceded that the issues raised and urged in the present petition as well as proposed amendment which was rejected are covered by the said judgment. However, I did not realize that there are other factual and legal contentions which are not at all covered by the judgment and it was under my misconception that I tendered a concession that these issues are covered."

[4] Against the above backdrop of facts, averments and statements on record, the learned Advocate, Mr. H.P. Raval, submitted that bona fide misconception of the learned Advocate making a concession before the Court should be considered sufficient ground to allow the application for review and the party may not be made to suffer on

account of the misunderstanding or misconception of his learned Counsel. Mr. Raval relied upon a recent judgement of the Supreme Court in Board of Control for Cricket, India & Anr. vs. Netaji Cricket Club & Ors. [AIR 2005 SC 592], and pointed out from paragraphs 88, 89 and 90 thereof that Section 114 of the Code of Civil Procedure, 1908 empowers a Court to review its order if the conditions precedent laid down therein were 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 of the Code in terms whereof it is empowered to make such order as it thinks fit. Order XLVII, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon 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 words 'sufficient reason' in Order XLVII, Rule 1 of the Code, are wide enough to include a misconception of fact or law by the Court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

Thus, in short, the plea of the applicant for review is based upon admitted misconception of the learned Counsel being sufficient reason for recalling the order sought to be reviewed.

[5] As learned Assistant Government Pleader, Shri L.R. Pujari, appearing for the State, has objected to entertainment of the application on the ground that learned Advocate appearing for the party cannot be presumed to be, or permitted to plead, ignorance of fact or law in respect of the case in which he is appearing as also about the reported judgement of this Court, it may be necessary to advert to few more facts to examine the plea of sufficiency of reason and alleged misconception of the learned Advocate.

[6] The original Special Civil Application No.4351 of 1990, obviously pending since the year 1990, was preferred mainly to challenge the judgement and order dated 25th August, 1989 of the Gujarat Revenue Tribunal, with a prayer to declare that the provisions of Section 6(3D) of the Gujarat Agricultural Lands Ceiling Act, 1960 were ultra vires the Constitution. The petition appears to have been moved for admission on 13th June, 1990 and the interim relief restraining the respondents from taking possession of any part of the lands claimed to be in possession of the petitioner was granted on 14th June, 1990. Thereafter, hearing of the petition appears to have been adjourned from time to time till 4th October, 2004 when it was stated at the Bar that the sole petitioner had passed away during the pendency of the petition. However, time of a week was granted for taking necessary instructions. Thereafter, on 2nd December, 2004, the following order by the Division Bench of this Court (Coram: Hon'ble Mr. Justice B.J. Shethna and Hon'ble Mr. Justice Sharad D. Dave) was made:

"This matter was listed on our running final hearing Board dated 22nd November, 2004 at Sr. No.3. It is listed for the 12th time. On 23rd, Mr. Nanavati for the petitioner requested not to take up the matter till 1st and we granted it.

Today, i.e. on 1st November, when it was called out at about 1:00 pm., nobody was present. Hence, dismissed."

Thereafter, the petition was restored and the attention of the learned Counsel was invited to the fact that necessary application for legal representatives was not made and hence, the matter had already abated. Then, it was informed to the Court that the petitioner was alive and the earlier statement about his demise was incorrect. Thereafter, the following order was made on 2nd November, 2006:

"At 11:30 a.m., Shri N.D. Buch, learned Counsel, appeared and prayed for an adjournment. When we refused to grant the adjournment, he said that Shri Upadhyay, learned Advocate, would argue the matter.

At 1:25 p.m., Shri Upadhyay submits that the matter may be adjourned. When we told him that according to Shri Buch, he was to argue the matter, he submitted that Shri Nanavati is to argue the matter, therefore, it be taken up on the next Monday. We refuse to concede to the request. Put up tomorrow, i.e. on 3rd November, 2006. It is made clear that if on the first call, there is no representation from the side of the petitioner, we will be forced to dismiss the petition."

It was thereafter that the order dated 3rd November, 2006 recording the concession came to be made.

[7] Having regard to the above record of facts, it would be clear beyond reasonable doubt that the petition was consciously not pursued, even as an order granting interim relief, practically ex parte, was operating since not less than sixteen years and the matter was being listed for hearing from time to time. It would also appear that when no other alternative except to argue the matter on merits was left, the concession, as recorded in the aforesaid order, was made and the proceedings were sought to be wound up on the basis of the concession which, after three months of the making thereof, is stated on oath to be under a misconception. The above record of proceedings is a sad summary of procrastination and abuse of the process of Court even as possession of a huge tract of land was withheld after adjudication of the petitioner's claim and specific orders of the authority concerned and the Revenue Tribunal. There was no satisfactory answer to our queries as to why the order impugned in the original petition, that is, the order of the Revenue Tribunal, was not implemented for ten months before the grant of interim relief in the main petition and even after the final order of this Court on 3rd November, 2006. It could be observed on

that basis that the operation of a progressive piece of land reforms legislation was thwarted for quarter of a century merely by, and even without, pendency of one or the other litigation.

[8] In view of the above facts and circumstances, it is impossible to accept the argument that there was bona fide misconception on the part of learned Advocate while making the concession on the basis of a reported judgement of this Court. As recorded at the outset in the order sought to be reviewed, it was not that the concession was immediately made, but, it was after arguing the petition at some length that the learned Counsel was inclined to concede that the issues sought to be raised and the challenges sought to be levelled, not only in the petition, but, even by way of proposed amendment, were squarely covered by the Division Bench judgement of this Court.

[9] In the facts and for the reasons discussed hereinabove, the application is rejected as neither bona fide nor disclosing sufficient reason for reopening the whole litigation for rehearing on merits.