W/R

## IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

**1-Review/LR/ 3686/2012/Jaisalmer**

Ranjeet Singh s/o Jaswant Singh, Caste Rajput, r/o village Ridmalsar Khariya, Tehsil Falaudi, District Jodhpur.

---------- **petitioner**

**Versus**

State of Rajasthan through the Deputy Colonisation Commissioner, Jaisalmer

------- **Non-petitioner**

**2-Review /LR/ 3687/2012/Jaisalmer**

Smt. Indrakanwar w/o Gulab Singh, Caste Rajput, r/o village Ridmalsar Khariya, Tehsil Falaudi, District Jodhpur

---------- **petitioner**

**Versus**

State of Rajasthan through the Deputy Colonisation Commissioner, Jaisalmer

------- **Non-petitioner**

**Single Bench**
**Shri Moolchand Meena, Member**

Present:-
Shri N. K. Goyal, Advocate for the petitioners.
Shri Hangami Lal Chaudhary, Deputy Government Advocate.

**Decision**

Dated: 07-06-2012

1- These two review petitions under Section 86 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as 'the Act of 1956') have been filed by the petitioners aggrieved by decision dated 01-05-2012 passed by this Court in revision Nos.860/12 and 861/12. Relevant facts, issue in controversy

and impugned decisions in both the cases are identical; therefore both the review petitions are being decided by this common decision. Copies of this decision may be placed in both the files.

2- Brief facts of the case leading to these review petitions are that petitioners filed revision Nos. 860/12 and 861/12 in this Court with averments that they had submitted applications under rule 18 of the Rajasthan Colonisation (Allotment And Sale of Government Land in the Indira Gandhi Canal Colony Area) Rules, 1975 ('the Rules of 1975' in short) for allotment of land in question situated in Chak No. 1-SD comprising in Square No.108/08 measuring 24 Bighas 05 Biswas in case of revision No.860/2012 and in Square No. 108/16 measuring 24 Bighas 05 Biswas in case of revision No.860/2012. The petitioners also deposited 25% of the sale amount on 9th March 2011. The petitioners' applications were allowed by the Allotting Authority–cum-Deputy Colonisation Commissioner vide his order dated 9th March 2011 and the case was sent to the Colonisation Commissioner, Bikaner for confirmation. The Colonisation Commissioner, Bikaner vide his order dated 9th September, 2011 has cancelled the allotment. Therefore above mentioned revision petitions were filed against the order dated 9th September, 2011 with a prayer that the order dated 9th September, 2011 passed by the Colonisation Commissioner, Bikaner may be set aside and allotment order dated 9th March 2011 of the Allotting Authority-cum- the Deputy Colonisation Commissioner may be upheld and confirmed. This Court after hearing both the parties, rejected both the revisions as time barred, vide its order dated 01-05-2012 against which the present review petitions have been filed.

3- The learned counsel for the petitioners and the Deputy Government Advocate were heard on review petitions.

4- The learned counsel for the petitioners, while repeating the facts and grounds mentioned in review petitions has argued that the Deputy Government Advocate had not taken any objection during the hearing of revisions, nor the Court itself had made any enquiry about the maintainability of the revision under section 84 of the Act of 1956. The revision

petitions have been rejected by this Court on the ground that they have been filed under wrong provisions. They should have been filed under Rule 23 (2) of the Rules of 1975 whereas have been filed under section 84 of the Act of 1956. It has been argued that mentioning of wrong provisions of law is not fatal. Alternatively it has also been argued that if the Court was of the opinion that the revisions were not maintainable under section 84 of the Act of 1956, the petitioners should have been allowed to amend the revision petitions or should have been given opportunity to file a fresh revision petitions. The learned counsel has placed reliance on the adjudication of the Hon'ble High Court in 2006 (2) RRT 1338, wherein it has been held that objects of the Courts should be to decide the rights of parties and not to punish them for their mistakes. One another judicial pronouncement by the Hon'ble Supreme Court reported in 2005 RBJ page 325 has also been quoted, wherein it has been held that technicalities should not come in way of doing the complete justice. The learned counsel has also relied upon AIR 1981 SC page 1400, wherein the Hon'ble Supreme Court has held that party should not be punished for the mistake of the counsel. On the point of limitation, the learned counsel has submitted that revision petitions were filed under section 84 of the Act of 1956 and the limitation for that purpose is 3 years. It has also been argued that these revision petitions were admitted on 07-02-2012 for hearing, and once the petitions are admitted for hearing they should not have been rejected on the ground of maintainability. With these arguments, the learned counsel for the petitioners has prayed that review petitions may be allowed, impugned decisions dated 01-05-2012 may be reviewed and set aside, and revision petitions may be listed for hearing.

5- The learned Deputy Government Advocate has submitted that an application was filed by the State on 30-03-2012 when the revision petitions were finally heard by this Court and issue of limitation was raised therein. Therefore arguments of the learned counsel for the petitioners are not correct that no objection was raised by the Deputy Government Advocate during the hearing of revisions about the maintainability. Furthermore, the Deputy Government Advocate has argued that the scope of review is limited and decisions can be reviewed only if there is an error apparent on

the face of record. In the present case, impugned decisions dated 01-05-2012 are based on legal provisions and there is no error in the decisions which can be termed as an error apparent on the face of record.

6- I have given a thoughtful consideration to the rival submissions made by learned counsels for the parties and I have also gone through the impugned decisions dated 01-05-2012 available in the file. The revision petitions were rejected as time barred. The argument advanced by the learned counsel for petitioners is not correct that the Deputy Government Advocate did not raise any objection pertaining to maintainability of the revisions on the basis of limitation. Application dated 30-03-2012 is there in the file wherein it has been clearly contended on behalf of the State that revision petitions have been filed after expiry of the time limit for the purpose. A mention to this effect has also been made in this regard in the impugned decisions. So the learned counsel, while advancing this argument has not submitted the correct position. Though, the application dated 30-03-2012 filed by the Deputy Government Advocate and arguments advanced by him are based on section 84 of the Act of 1956, but while authoring a decision, it is the duty of the Court to examine the matter in the light of correct provisions of the law applicable. Here in the present case, after examining the matter, this court was of the opinion that the revision petitions have been filed under wrong provisions of the law, and reasons for this opinion have been assigned in the impugned decision in details. Filing of petitions under section 84 of the Act of 1956 instead of rule 23(2) of the 1975 Rules, may, apparently, appear to be a technical mistake, but substantially it matters a lot; because both the provisions contained separate law relating to time limit for filing revisions. If one has selected a provision which either does not provide any time limit or which has provided much more time limit for filing the revision than the actual law under which the revision should have been filed, then inference is natural that it has been done purposefully. It cannot be said to be out of bona fide mistake.

7- Thus, it is clear that the impugned decisions dated 01-05-2012 passed by this Court have been authored after

considering all the facts and legal provisions relevant to the matter in hand. Those were not the decisions given by mistake. The scope of review under section 86 of the Act of 1956 or under section 229 of the Rajasthan Tenancy Act, 1955 or under Order 47 Rule 1 of the Civil Procedure Code, 1908 is very limited and there is a series of authorities of the higher level Courts wherein it has been repeatedly held that issues heard, discussed and decided cannot be the grounds for review.

8- The basic principles laid down by the Hon'ble Apex Court in AIR 1995 SC 455, regarding difference between an appealable and reviewable order, can be summarized as under:-

*(a) That the review proceedings are not a by-way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1, CPC.*

*(b) The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.*

*(c) It has to be kept in view that an error apparent 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 long drawn process of reasoning on points where there may conceivably be two opinions.*

*(d) An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error on the face of the record.*

9- Thus it is clear that only an error apparent on the face of the record can be the basis of review. After going through the impugned decisions and considering all the facts

mentioned in review petitions and arguments advanced by the learned counsel for the petitioners, I am unable to find any mistake in the impugned decisions which can be said to be an error apparent of the face of the record. It has been held by the higher level courts that even an erroneous decision can not be a ground of review. The Hon'ble High Court for Rajasthan in 2005 RBJ (12) page 290, has held as under:-

> *"The scope of review is very limited. It has been clearly held in a catena of cases that a judgment order may be open to review under Order 47 Rule 1 CPC 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 process of reasoning can hardly be said to be an error apparent on the face of record justifying exercise of power of review. In exercise of jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be re-heard and corrected. There is clearly distinction between 'an erroneous decision' and 'an error apparent on the face of the record.' While the former can be corrected by higher forum, the latter can be corrected by exercise of review jurisdiction. A review petition has, therefore, a limited purpose and can not be allowed to be an appeal in disguise."*

10- Thus it is a well settled principle of law that *'an erroneous decision'* and *'an error apparent on the face of record'* are different from each other, and there are different sets of legal provisions for dealing with both the things. If the decision suffers from 'an error apparent on the face of record', it can be corrected in review proceedings but if the decision is erroneous or is based on erroneous view taken by the Court on some documents, facts, evidence or law; it cannot be corrected in review proceedings. Further appeal or writ is the only treatment for erroneous decisions. Review proceedings cannot take place of an appeal or a writ petition.

10- In view of the foregoing discussions, this Court is of the considered view that the impugned decisions dated 01-05-2012 passed by this Court in revision Nos. 860/12 and 861/12 do not suffer from any 'error apparent on the face of record', nor any new and important matter or evidence has been put

forth by the petitioners, which was not produced by him at the time when the revisions were heard and decided. Thus both the present review petitions are devoid of substance and deserve to be rejected at the level of admission itself.

However, only in the interest of justice, **I am inclined to agree with the argument of the learned counsel for the petitioners that party should not be penalized for the mistake of the counsel.** Therefore, invoking inherent powers of the Court, I deem it proper to treat these review petitions as applications for permission to file fresh revisions.

11- Consequently, both the review petitions in hand are hereby rejected, with permission to the petitioners for filing fresh revisions under suitable provisions of law against the order dated 09-09-2011 of the Colonisation Commissioner, if they wish so. If such fresh revisions are filed, they may be considered subject to limitation and other legal provisions applicable.

Pronounced in the open Court.

(Moolchand Meena)
Member