

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 REVIEW APPLICATION (CIVIL) NO. 156 OF 2016
IN FA/309/2001

HAIBATRAO GOVINDA DHOLE SINCE DECEASED THR LRS
JAYABAI AND ORS
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicants : Mr. Bhandari Anand P.
Mr. AM Phule, AGP for Respondent 1.

CORAM : P.R.BORA, J.

DATE : 2nd September, 2016.

PER COURT :

1) Heard. By filing the present application, the applicants are seeking review of order dated 23.2.2015 passed by this Court (Coram: M.T.Joshi,J.) in First Appeal No. 309/2001. The aforesaid appeal was filed by the applicants challenging the judgment passed in LAR No.381/1996 with connected matters decided by Joint Civil Judge, Senior Division, Aurangabad on 10th January, 2000. The Reference Application filed by the applicants was dismissed by the Reference Court.

2) This Court, vide the judgment passed in aforesaid First Appeal 309/2001, remanded back the matter to the Reference Court to decide the Reference Application afresh by granting opportunity to the appellant to lead oral as well as documentary evidence.

3) However, while remitting the matter to the trial Court, this Court in Para 5 of the aforesaid order has observed thus, -

"5. However, as the State cannot be blamed for the delay, in case any enhancement is granted by the reference Court after remand, the appellant/claimant would not be entitled for any statutory interest for the delayed period.

4) Consequent to the aforesaid observations, clause 4 was introduced in the order part of the said judgment, which reads thus, -

(IV) In case of enhancement of compensation, the appellant would not be entitled for statutory interest over the same from the date of earlier award till the date of present order.

5) In view of the judgment and order passed by this Court in the aforesaid First Appeal, the Reference application was heard and decided afresh by the Reference Court vide its judgment dated 18th April, 2016. The Reference Court though has enhanced the amount of compensation and also awarded the statutory benefits and interest to the appellants, has dis-entitled the applicants from interest of the period from 13.6.2000 till 23.2.2015.

6) It is the contention of the applicants that the Reference Court has dis-entitled the appellants from getting interest of the period as aforesaid under Section 28 and 34 of the Land Acquisition Act, 1894 (for short, as the Act), as

a result of the observations made by this Court in Para 5 of the judgment in First Appeal No.309/2001 and consequential directions in clause 4 of the order passed in the aforesaid first appeal.

. It is the further contention of the applicants that it is settled position of law that the claimants cannot be blamed for delay in disposal of the proceedings so also the statutory benefits available to the claimants under the law cannot be taken away.

. It is the further contention of the applicants that no such order could have been passed by this Court in view of the law laid down by the Hon'ble Apex Court in Rattiram Vs. Union of India and Ors. (Civil Appeals No. 11177 and 11178 of 2011 decided on 17.2.2016).

7) In the circumstances, the applicants have prayed for review of the order passed by this Court in First Appeal No.309/2001 so far as it relates to observations made in Para 5 of the

said judgment and clause 4 of the order therein.

8) The learned Counsel for the applicants has referred to and relied upon the following judgment, -

1) *Rattiram Vs. Union of India and Ors. (Civil Appeals No. 11177 and 11178 of 2011 decided on 17.2.2016);*

2) *Patel Joitaram Kalidas and ors. vs. Spl.Land Acquisiton officer & Anr. - (2007) 2 SCC 341;*

3) *Marotisa s/o Tansa Bhamkar (since deceased through his L.Rs. Vs. State of Maharashtra) -2015 (6) Mah.L.J. 256;*

4) *State of Madras Vs. AM.Nanjan and Anr. - AIR 1976 SC 651;*

5) *Karan Singh and Ors Etc. Vs. Union of India - AIR 1997 SC 3889*

9) Shri Phule, learned AGP appearing for the State, has opposed the submissions advanced on behalf of the applicants. The learned AGP submitted that since there is no apparent error

on the face of the record, the review application so filed is not maintainable. The learned AGP further submitted that no case is made out for review of the order passed by this Court in First Appeal No.309/2001. He, therefore, prayed for rejecting the review application.

10) The applicants have sought review of the order on two grounds. First that the observations made in para 5 of the said Judgment and order clause (VI) of the said Judgment, are against the settled position of law that the claimants cannot be blamed for delay in disposal of the proceedings so also the statutory benefits available to the claimants under the law, cannot be taken away, meaning thereby that the observations so made and the order so passed is erroneous on merits.

11) In so far as this ground is concerned, an erroneous view of evidence or of law cannot be a ground for review though it may be a good

ground in an appeal. The question as to what was the correct legal position on the date of judgment of the High court in question and further as to whether said judgment was in consonance with such legal position pertain to the merits of the said judgment and could provide ground for filing appeal but cannot be a ground for review of the said judgment.

12) From the averments made in para 9 of the review application and the submission advanced by the learned Counsel for the applicants, the another ground for seeking review of the order is the law laid down by the Hon'ble Apex Court in the case of Rattiram Vs. Union of India (cited supra). Admittedly, the aforesaid decision has been rendered by the Hon'ble Apex Court on 17th February, 2016, i.e. after the order passed by this court of which review has been sought by the applicants. In view of the Explanation added to Rule 1 of Order 47 of the Code of Civil Procedure, the view taken on a question of law in

a subsequent decision of a superior court in any other case, shall not be a ground for the review of the judgment.

13) Thus, on none of the grounds canvassed by the applicants the order can be reviewed. Since the applicants have failed to make out any case for review of the order, the Review Application deserves to be rejected and is accordingly rejected.

(P.R.BORA)
JUDGE

bdv/