IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 201 OF 2019
IN FIRST APPEAL NO. 1750/2014 WITH C.A.NO. 11651 OF 2019

KIRAN SHANTARAM DAHANUKAR AND OTHERS ..APPLICANTS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER ...RESPONDENTS

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Advocate for Applicants : Mr. VA.P. Bhandari
APP for Respondents: Mrs. D. S. Jape
Advocate for respondent No.2 : Mr. A.S. Bajaj

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WITH
CIVIL APPLICATION NO. 7204 OF 2019
IN F.A. 1745/2014

UNITECH LIMITED … APPLICANT
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER … RESPONDENTS

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Advocate for the Applicant : Mr. Y. B. Bolkar
A.P.P for Respondent-State : Mrs. D.S. Jape
Advocate for respondent No.2 : Mr. A.S. Bajaj

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CORAM :T.V. NALAWADE AND S. M. GAVHANE,JJ.

DATE : 22.11.2019.

ORDER :-

Both the proceedings are filed for review. The proceeding No. 201 of 2019 is filed by the respondent of First Appeal No. 1750 of 2014 and other proceeding is filed by the respondent of first appeal No. 1745 of 2014. By the common judgment dated 22.02.2019, this Court has partly allowed both the appeals and the award of the reference Court given in LAR No 134/2002 and 167 of 2002 is modified. This Court has given the rate of Rs. 6150 per Are, by holding that agricultural land which was dry crop land was acquired. The sale instance of the rate of Rs. 10,250/- is considered and accepted but 40% deduction is made in that rate by holding that such deduction was necessary as the land was to be acquired for some development project and for that development of the land was necessary and so deduction was necessary. In the decision, the claimants, the persons who had lost the land had produced copy of the decision given by this Court in first Appeal No. 1794 of 2013 and this decision was in respect of the land acquired from the same village and in that matter the rate of Rs. 10,875 per Are was given for dry crop land. As the said decision was challenged by the acquiring body by filing proceeding in the Supreme Court and the proceeding was pending on the date of the decision of the First Appeal, this Court did not consider that circumstances and aforesaid decision came to be given.

2. The learned counsel for the applicants submitted that the

proceeding which was filed in Supreme Court by the acquiring body to challenge the decision of the Fist Appeal No. 1794 of 2013 came to be dismissed, though subsequent to the decision of the present appeals and so the decision of First Appeal No. 1794 of 2013 which was given by this Court can be considered now for giving proper rate. The learned counsel for the applicants further submit that when this Court had given finding that the rate needs to be given of agricultural land and not by considering the NA potential, it was not open to the Court to make deduction for development charges. Learned counsels for the applicants submitted that as there is some mistake which is apparent on the face of the record, the mistake needs to be corrected. Other submissions on merits like the land in question was adjacent to the road and to one land which was away from the road, the rate of Rs. 102 per square meter was given, were also made.

3. The learned counsel for the applicants placed reliance on the observations made by the Apex Court in three cases as follows :-

(I) ***S. Bagirathi Ammal Vs. Palani Roman Catholic Mission*** (2007 STPL 22437 (Supreme Court)

(ii) ***<u>Arikala Narasa Reddy Vs. Venkat Ram reddy Reddygari And Another Vs. Venkat Ram Reddy Ereddygari Vs. Arikala Narasa Reddy and Another</u>*** (2014 *STPL 7568 (Supreme Court)*

(iii) ***<u>Roshan Lal Vs. State of Punjab and Others</u>*** [(2016 STPL 1405 (Supreme Court of India)]

The learned counsel submitted that in the case of ***<u>S. Bagirathi Ammal Vs. Palani Roman Catholic Mission</u>*** (2007 STPL 22437 (Supreme Court) the Apex Court has considered the provision of Order 47 Rule 1 of the Code of Civil Procedure and the Apex Court has laid down test to ascertain as to when the review is permissible. The observations are as follows :-

> ‘’ A reading of the above provision makes it clear that Review is permissible (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed (b) on account of some mistake, (c) where error is apparent on the face of the record or is a palpable wrong (d) any other sufficient reason. If any of the conditions satisfy, the party may

apply for a review of the Judgment or order of the Court which passed the decree or order. The provision also makes it clear that 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. An 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. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the appellant, in such circumstances, the review will lie. Under the

> guise of review, the parties are not entitled re-hearing of the same issue but the issue can be decided just by a perusal of the records and if it is mainfest cdan be set at right by reviewing the order. With this background, let us analyze the impugned judgment of the High Court and find out whether it satisfy any of the tests formulated above. ''

4. There cannot be dispute over the proposition made above. Some factual aspect about the review application itself needs to be mentioned. The first appeals were decided by the Court which was consisting of two Judges of this Court out of whom one Hon'ble Judge who delivered the Judgment retired in June 2019. The Judgment was delivered on 22.02.2019, though it was reserved on 08.02.2019. Thus, the copy of the Judgment was available to the present applicants after 22.02.2019. The review application No. 201 of 2019 was filed on 18.03.2019 and the other proceeding came be filed on 22.03.2019, though, by mistake the date was initially typed as 22.03.2018. On that day the Hon'ble Judge who had delivered the Judgment was very much available but no circulation was obtained. As per the record circulation was obtained first time

on the date 26.09.2019. In ordinary course attempt ought to have been made to seek the listing of the matter for review when the Hon'ble Judge who had delivered the Judgment was available but that was not done.

5. The Judgment delivered by the Hon'ble Judge shows that the Court has considered the factual aspect. The sale instance involved considered for giving market rate small portion of the area when the land of the present applicant acquired was very big portion. The Court had considered the judgment delivered in the past like decision of First Appeal No. 1794 of 2013 but as the said decision was challenged and the matter was pending in the Apex Court, the said decision was not used for deciding the appeals of the present respondent. It appears that sale instance (Exh. 39) was considered and the rate of that sale instance was taken as basis for ascertaining the market price of the acquired land. It is held that 40% deduction is necessary from the prevailing market value of the acquired land on the date of publication of notification under Section 126 (4) of the MRTP Act. This Court does not want to go into further details of the decision. This Court holds that if at all the applicants feel that this Court has committed mistake and proper compensation is not awarded and then it is open to

them to challenge the decision of this Court. Further the appeals were filed by the acquiring body and the Government and it can be said that in the appeal the rate given by the reference Court which was on the basis of NA Potential, Rs. 196 per square meter was changed and the rate is given by this Court by presuming that it was dry crop land. In view of these circumstances also it was necessary for the present applicant to challenge the decision. This Court holds that the contentions made by the applicant cannot be considered in view of scope of ‘’ review’’.

6. In the result, both the applications stand dismissed the connected civil applications also stand disposed off.

(S.M. Gavhane, J.) **(T.V. NALAWADE, J.)**

YSK/