

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Review Application No. 0197 of 2019
(In First Appeal No. 0607 of 2019)

District : Jalna

1. Laxman s/o. Dattarao Borade,
Age : 50 years,
Occupation : Agriculture.
2. Ramrao s/o. Dattarao Borade,
Age : 48 years,
Occupation : Agriculture.
3. Ankushrao s/o. Sahebrao Borade,
Age : 45 years,
Occupation : Agriculture.

All R/o. Ambhoda (K),
Taluka Mantha,
District Jalna.

.. Applicants
(Original
claimants)

versus

1. The Executive Engineer,
Minor Irrigation (Local sector),
Division Jalna,
Now Executive Engineer,
Irrigation Division,
Near Motibag, Jalna,
Dist. Jalna.
2. The State of Maharashtra,
Through Dist. Collector,
Jalna, Dist. Jalna.

3. The Special Land Acquisition
Officer,
Gavthan, Collector Office,
Jalna, Dist. Jalna.

.. Respondents
(Original
respondents)

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Mr. Vilas M. Humbe, Advocate, for the applicants.

*Mr. S.P. Deshmukh, Assistant Government Pleader,
for respondents no.01 to 03.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 13TH SEPTEMBER 2019

ORDER :

01. Present review application has been filed by the original appellants in First Appeal No. 0607 of 2019, claiming the review of the judgment and order passed by this Court on 03-06-2019, whereby the first appeal was dismissed.

02. The appellants are the original claimants who had filed reference under Section 18 of the Land Acquisition Act, 1894, before 4th Joint Civil Judge (Senior Division), Jalna, bearing L.A.R. No.712 of 2011, which came to be dismissed on 05-01-2017. The belonging to the present review petitioners, bearing Gut no.161 and 162 to the extent of 02 hectares 05 R and 01 hectare 05 R respectively, situated at village Ambhoda (K), Taluka Mantha, District Jalna, was acquired for percolation tank. The learned reference Court had dismissed the reference for enhancement in the compensation on the ground that the present appellants did not lead any evidence. By filing the said first appeal, it was contended that no opportunity to lead evidence in support of their

claim was given by the reference Court and prayer for remand was made. This Court after hearing both sides, rejected the appeal on the ground that sufficient opportunity was given to the appellants, yet, they did not produce any evidence and therefore, there is no question of setting aside the reference and remanding the matter. Present review petitioners seek review of the said judgment and order passed by this Court.

03. Heard learned Advocate Mr. V.M. Humbe appearing for the applicants. Heard learned AGP Mr. S.P. Deshmukh appearing for the respondents.

04. It has been vehemently submitted on behalf of the appellants, that this Court did not consider that proper opportunity was not given to the claimants to lead evidence by the learned reference Court. In fact, market price of their land was Rs. 68,000/- per acre, however Special Land Acquisition Officer granted only Rs.650/- per R, which was grossly inadequate. The reference Court had hurriedly decided the reference and therefore, this Court ought to have remanded the matter.

05. Learned Advocate appearing for the review petitioners relied on the decisions of this Court in *Minaxi d/o. Lingram Dudde Vs. The State of Maharashtra & another* [First Appeal No. 3772 of 2016 with companion matters, decided on 15-10-

2016]; *Appasaheb Mohanrao Chede Vs. The State of Maharashtra & Another* [2012(1) Bom.C.R. 458] and *Arjun Shankar Waghmare & another Vs. The State of Maharashtra* [2011(2) Bom.C.R. 866]. It is submitted that in all these cases, it has been held by this Court, that the reference Court could not have rejected the reference on the ground of failure on the part of the claimants to adduce evidence. Claim of the petitioners could have been decided on merits and then the judgment and award passed by the reference Court has been set aside and the matters have been remanded. Reliance was placed on the earlier decisions of this Court in *Kawadu Madhav Bansod Vs. The State of Maharashtra* [2004(2) Mh.L.J. 503] and *Khajan Singh Vs. Union of India* [2002(2) Mh.L.J. 259].

06. Per contra, learned Assistant Government Pleader submitted that the review petition is not maintainable as there is no error apparent on the face of the record.

07. The first and the foremost fact that is required to be considered is the perusal of the review petition is nothing but the replica of the grounds taken in the first appeal. The ratio laid down in above said authorities relied by the learned Advocate for the applicants cannot be denied. However, it is to be noted that all these judgments were not pointed out at the time when the arguments were advanced when first appeal was heard. Secondly,

perusal of the impugned judgment would show and as it has been reflected in the judgment of this Court, that sufficient opportunity was given to the appellants to lead evidence. Basically the reference was filed in the year 2011 and ultimately the decision has been given on 05-01-2017. That means, the reference was pending before reference Court for about 05 years, 01 month and 11 days. The appeal memo was silent on the point as to why the present review petitioners could not lead evidence. When the matter was pending for so many years, it cannot be stated that the reference has been decided in a hurry.

08. Another important fact which can be said to be making difference and on this point, the decisions earlier referred of this Court can be distinguished, is that in those cases there might have been evidence adduced along with the reference before the reference Court itself, which was not taken into consideration by the reference Court. However, in this case, absolutely no evidence on the basis of which enhancement was claimed was produced along with the reference application. It has been tried to be produced along with the review application now. When even along with the reference application evidence was not adduced, on what basis the reference Court was supposed to come to a conclusion is a fact and the original claimants were not coming forward to

adduce evidence. Matters cannot be allowed to remain pending for years together. Therefore, though I am in agreement with the ratio laid down in the above said authorities which have been relied by the learned Advocate, the distinguishing factor is that in the present case, there was no dismissal of the reference in default but it was on the basis of the fact that no evidence was adduced and there was no evidence on record to support the enhancement in the compensation.

09. The scope of the review petition is required to be considered. In *Vinay Sharma & another Vs. State (NCT of Delhi) & others* [(2018) 8 SCC 186], it has been observed that "*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 reopen concluded adjudications.*" Here, in this case, the points which have been raised by the review petitioners can be termed as repetition of old and overruled arguments. Further, in *Haryana State Industrial Development Corporation Limited Vs. Mawasi & others* [(2012) 7 SCC 200], it has been held that "*Roving inquiry or de novo hearing in guise of review is impermissible.*" Reliance was placed in this decision, in the case of *Thungabhadra Industries Ltd. Vs. Govt. of A.P.* [AIR 1964 SC 1372] (*Three Judges Bench*), wherein it has been observed thus :-

"11. ... A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out."

Further note was taken in respect of the decision in *Parsion Devi Vs. Sumitri Devi* [(1997) 8 SCC 715], wherein it has been observed thus :-

"9. ... 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 under Order 47 Rule 1 CPC ... A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

The same ratio is reiterated in *Vikram Singh alias Vicky Walia & another Vs. State of Punjab & another* [(2017) 8 SCC 518], wherein it has been held that *"Review cannot be made on those grounds which were already urged during appeal."* In this case, the term *"an error apparent on the face of the record"* has been explained with the help of earlier pronouncement of the Hon'ble Apex Court in *Kamlesh Verma Vs. Mayawati* [(2013) 8 SCC 320], wherein it was held that *"an error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record."*

The ratio laid down in *State of West Bengal & others Vs. Kamal Sengupta & another* [(2008) 8 SCC 612] can be taken wherein it has been observed thus :-

"21. At this stage, it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

10. Thus, taking into consideration the above said legal position, it can be said that the points

which have been raised by the review petitioners are not within the ambit of the powers of review which can be exercised under Section 114 read with Order XLIVII of the Code of Civil Procedure, 1908.

11. There is no merit in the present review application and the same is accordingly dismissed.

(Smt. Vibha Kankanwadi)
JUDGE

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