

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION (REVIEW) NO. 564 OF 2018

IN
FIRST APPEAL NO. 333 OF 2006

Leeladhar s/o Pandurangji Pohane

..VS..

State of Maharashtra, thr. the Collector and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.U. Nemade, Advocate for applicant.
Ms. T. Udeshi, A.G.P. for respondent no. 1
Shri J.J. Chandurkar, Advocate for respondent nos. 2 and 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 28/01/2021

The Applicant herein has filed this application under Order XLVII Rule 1 of Code of Civil Procedure seeking review of the judgment dated 07.07.2017 in First Appeal No. 333 of 2006.

2. By judgment dated 07.07.2017 in First Appeal No. 333 of 2006, this Court held that the compensation awarded by the Reference Court was just and reasonable and therefore, rejected the claim for enhanced compensation. The Applicant has sought review of this judgment *inter alia* on the ground that :

- (a) The Court has erred in fact and in law in discarding just and cogent evidence of comparable sell instances of adjacent land.
- (b) The Court has also erred in relying upon the sell instances referred to by the Land Acquisition

Officer.

- (c) The Court ought to have held that entire land in question is perennial irrigated land.
- (d) The Court erred in fact and in law in not granting enhanced compensation instead of 474 orange trees.
- (e) The Court misread and misconstrued the oral as well as documentary evidence.

3. Learned Counsel for the Applicant has relied upon the decision of the Apex Court in the case of *Board of Control for Cricket, India and anr. v. Netaji Cricket Club and ors. reported in AIR 2005 SCC 592* to contend that the application for review is maintainable even on misconception of law and fact. He submits that, the Court has misconceived and misdirected itself in applying belting method to the entire acquired land in question. It is stated that once it is proved that the perennial irrigation facility was available though well, the question of bifurcating the acquired land in question in such kind of different belt does not arise. He further submits that the decisions relied upon by him, have not been considered and that there is also misreading of evidence. He therefore, contends that, it is a fit case for review.

4. At the outset, it may be mentioned that Order XLVII Rule 1 of Code of Civil Procedure permits review only on three specific grounds which are as follows :

- “(i) discovery of new and important matter of evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the decree was passed or order was made, or*
- (ii) some mistake or error apparent on the face of the record or*
- (iii) for any other sufficient reason.”*

5. In the case of ***Lily Thomas vs. Union of India, (2000) 6 SC 224***, the Apex Court held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The Apex Court has further observed that the words “any other sufficient reason” appearing in Order XLVII Rule 1 of the Code of Civil Procedure must mean “a reason sufficient on grounds at least analogues to those specified in the Rule”.

6. In *Board of Control for Cricket (supra)*, the Apex Court has considered the scope of Section 114 and Order XLVII Rule 1 of the Code of Civil Procedure and has held that the application for review would be maintainable not only upon the discovery of new and important matter 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. It is held that what would

constitute a sufficient reason would depend on the facts and circumstances of the case and that the word “sufficient reason” in Order XLVII Rule 1 of the Code is wide enough to include a misconception of fact or law by a Court or even an advocate.

7. In the case of *West Bengal and ors. Vs. Kamal Sengupta and anr. (2008) 8 SCC 612* the Apex Court has observed that 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 XLVII Rule 1 of the Code of Civil Procedure. The Apex Court has observed that 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 on a point of fact or law. It is held that while exercising the power of review the Court/Tribunal concerned cannot sit in appeal over its judgment / decision.

8. In *Shriram Sahu (dead) through L.R's Vs. Vinodkumar Rawat* Civil Appeal 3601/2020, the Apex Court after considering the previous decisions on the subject has held thus :

“9. To appreciate the scope of review, it would be

proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed herein above. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.”

9. A perusal of judgment dated 07.07.2017 reveals that the Applicant herein had challenged the

classification of the land in three categories by the Land Acquisition Officer and the findings rendered by the Reference Court upholding the said classification. This Court after considering the oral and documentary evidence on record has recorded a specific finding that the Special Land Acquisition Officer or Reference Court had not committed any error in assessing the market value of the land on the basis of three categories, depending on the quality, and assessing its market value accordingly. In recording the said findings this Court has appreciated the evidence, considering the pleas threadbare and passed a detailed judgment. The Applicant under the garb of review, is seeking re-hearing, apparently on the ground that the judgment is erroneous. The '*errors*' spelt out in the application are far from self-evident and can hardly be considered as 'an error apparent on the face of the records'.

10. The Applicant has not made out any ground as envisage under Order XLVII Rule 1 of the Code. Hence, the review application has no merit and accordingly, dismissed with no order as to costs.

JUDGE