

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

MISC. CIVIL APPLICATION NO. 302/2020 IN
FIRST APPEAL NO. 1330/2008
(Decided on 03.10.2019)

(The Executive Engineer, Lower Pus Project, Pusad, Dist. Yavatmal Vs. Ashokkumar
S/o Deobarao Naik & ors.)

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

Court's or Judge's orders

Mr. Amol B. Patil, Advocate for applicant.
Mr. S. U. Nemade, Advocate for respondent No.1.
Mr. A. M. Kadukar, AGP for respondent Nos. 2 & 3.

CORAM : **V. G. BISHT, J.**
RESERVED FOR ORDER : **28/03/2022**
PRONOUNCEMENT OF ORDER : **18/04/2022**

Heard.

2. The applicant (original respondent No.2) hereby seeks review of the judgment and award dated 03.10.2019 passed by this Court in First Appeal No. 1330/2008.

3. Mr. Patil, learned counsel for the applicant invited my attention to the various grounds raised in the memo and would submit that this Court has not given any specific reason or finding to differ with the earlier rate fixed by this Court in First Appeal No. 1110/2008 and other connected matters

arising out of the same judgment and award of the Reference Court while granting Rs. 1,66,000/- per hector for irrigated land and Rs. 3,000/- per tree for Orange and Sweet lime tress. According to the learned counsel for the applicant, this Court has not considered the evidence brought on record which has been placed by the present respondent No. 1 in the form of joint measurement report. So also without considering the age of the orange trees, Rs. 3,000/- per tree has been granted. Learned counsel for the applicant submits that there is an error apparent on the face of the record which has been occurred while passing judgment under review and therefore, needs to be reviewed in proper perspective. Learned counsel for the applicant placed reliance in *Chairman And Managing Director, Central Bank of India and others Vs. Central Bank of India Scheduled Castes/Scheduled Tribes Employees Welfare Association and others, (2016) 13 SCC 135*.

4. Mr. Nemade, learned counsel for the respondent No.1. on the other hand, opposes the submission and submits that it is wrong to say that this Court has not considered the earlier judgment given by this Court in First Appeal No.

1110/2008 in proper perspective. According to the learned counsel for the respondents, this Court has taken into consideration all relevant material and also precedent which were needed for the decision of appeal in question. There is no apparent error on the face of the record and since the present application does not satisfy the requirements of Order XLI Rule 1 of the Code of Civil Procedure, the same is liable to be dismissed.

5. There is no dispute to the fact that the First Appeal No. 1330/2008 was preferred against the judgment of the Reference Court in LAC No. 495/2002 and other connected L.A.Cs. This Court had not only considered the submissions advanced by the parties, but also considered the judgment of this Court in First Appeal No. 1110/2008 in which, the price of dry crop land of village Ghamapur was fixed @ Rs. 83,000/- per hector. Since the land in question was admittedly an irrigated land, this Court followed the dictum given by the Hon'ble Apex Court in case of *Chindha Fakira Patil (dead) through Lrs. Vs. Special Land Acquisition Officer, Jalgaon [2012(2) Mh.L.J.530]* and held that the appellant is entitled for double the rate of dry

crop land i.e. Rs. 1,66,000/- per hector.

6. It further appears that this Court also referred the judgment given by this Court in *First Appeal No. 205/2006 (Santosh D. Bhaiswar Vs. State of Maharashtra and others)* decided on 09.01.2005 and held that the appellant is entitled for compensation @ Rs. 3,000/- per tree for Orange and Sweet Lime trees. Thus, this Court allowed the appeal in the aforesaid terms.

7. I may make it clear that an order/judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by this Court on the point of fact or law. According to the learned counsel for the applicant not only the judgments were not properly appreciated, the evidence was also not considered by this Court while disposing of the first appeal which in my considered view, may require debate followed by process of reasoning. Needless to say that this requires advertence on merits which is in the province of the Appellate Court. Apparently, there is no error which is self-evident. In any case, this Court cannot sit in appeal over its judgment while

exercising the power of review. Whatever the findings are recorded by this Court while passing the judgment on 03.10.2019, cannot be treated as an error on the face of the record for the purpose of review.

8. The grounds which have been raised, at the most, can be grounds for appeal before the Appellate Court. No case is made out for review.

9. I have also gone through the judgment relied by the learned counsel for the appellant. The factual position obtaining therein vis-a-vis case in hand is quite distinguishable and therefore, cannot be made applicable to the case in hand.

10. In the circumstances, the present application necessary fails and stands dismissed.

[V. G. BISHT, J.]

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by JITENDRA
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2022.04.18
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