

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CIVIL APPLICATION NO.7733 OF 2022
IN RAST/23663/2021
WITH
REVIEW APPLICATION (STAMP) NO.23663 OF 2021
WITH
CIVIL APPLICATION NO.1728 OF 2023
IN RAST/23663/2021

Vitthal Nanabhau Nirval,
Age 70 yrs., Occ. Agri.,
R/o Nansi, Tq. Mantha,
Dist. Jalna.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra
Through The Collector, Jalna.
- 2 The Special Land Acquisition Officer
(M.I.W.) Jalna.
At present : The Sub Divisional Officer,
Partur, Tq. Partur, Dist. Jalna.
- 3 The Executive Engineer,
Nimna Dudhana Project,
Divisional Sailu, Dist. Parbhani.
At present : Jalna Irrigation Department,
Near Motibag, Jalna.

... Respondents

...

Mr. S.S. Deshmukh, Advocate h/f Mr. V.D. Bhise, Advocate for applicant

Mr. A.M. Phule, AGP for respondent Nos.1 and 2

Mr. M.P. Gude, Advocate for respondent No.3

...

CORAM : SMT. VIBHA KANKANWADI, J.**DATE : 30th JUNE, 2023****ORDER :**

1 **Civil Application No.7733 of 2022** has been filed for condoning the delay of 666 days in filing review application to the First Appeal. This Court has decided the appeal bearing First Appeal No.908 of 2017 on 05.08.2019 by reasoned Judgment and order. In the said First Appeal challenge was given to the Judgment and Award dated 13.10.2015 passed by learned 4th Joint Civil Judge Senior Division, Jalna in Land Acquisition Reference No.222/2010.

2 The learned Advocate for the applicant submits that the applicant is poor agriculturist and illiterate. He was hospitalized and he has supported reasons with the documents for not approaching this Court in time for filing review.

3 Though the learned AGP for respondent Nos.1 and 2 and learned Advocate Mr. M.P. Gune for respondent No.3 have objection; yet, taking into consideration the fact that the review applicant is original claimant,

agriculturist and illiterate and his application is supported by documentary evidence to show that he was ill for certain days and also on account of his age i.e. 70 years, the delay deserves to be condoned. Accordingly, it is condoned.

4 With the consent of all the learned Advocates the review application is heard. In fact, there is also another Civil Application No.1728 of 2023 seeking permission to amend the review application by incorporating para Nos.8-A to 8-F.

5 As regards the review application is concerned, the review has been sought on the ground that the reference Court relied on the Judgment and Award passed in Land Acquisition Reference No.1094/2010 and also relied on the same evidence for getting additional compensation and the said Land Acquisition Reference is carried before this Court by way of First Appeal No.770 of 2017 and it is still pending for condonation of delay. The claimant had approached this Court in First Appeal No.908 of 2017 for additional compensation and this Court rejected the same on the ground that the reference Court has, in fact, relied on Land Acquisition Reference No.1094/2010 and the contention of the claimant himself about the parity was accepted by the reference Court. Further, there is discovery of some new

important relevant evidence which was not produced by the applicant in spite of exercise of due diligence. It has been further submitted that if the amendment is allowed to the review application, then the applicant wants to bring on record certain decisions of the Hon'ble Apex Court and those decisions were not taken into consideration by this Court. Under the said circumstance, the review needs to be allowed. The review applicant i.e. original claimant should get reasonable and just compensation as his land has been acquired for public purpose. The amount which now the review applicant is getting is very meagre as compared to what he should get.

6 Learned AGP and learned Advocate for the Acquiring Body have strongly opposed the review application and submitted that the reasons given by this Court were sufficient. A fair opportunity was given to the appellant, who was duly represented by Advocate to put forth all the necessary evidence. Under such circumstance, there is no error apparent on the face of the record.

7 Before turning to the merits of the review the legal position will have to be placed on record. The scope of the review application is required to be considered. In **Vinay Sharma and another vs. State (NCT of Delhi) and 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.”

7.1 Further, in **Thungabhadra Industried Ltd. vs. Government of A.P** [AIR 1964 SC 1372] (Three Judges Bench) it has been observed that -

“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 out 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.”

7.2 Further, in **Parsion Devi vs. Sumitri Devi [(1997) 8 SCC 715]** it has been observed that -

“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.’”

7.3 Same ratio has been reiterated in **Vikram Singh @ Vicky Walia**

and another vs. State of Punjab and another [(2017) 8 SCC 518], wherein it has been observed that “*Review cannot be made on those grounds which were already urged during appeal*”.

7.4 Further, in **State of West Bengal and others vs. Kamal Sengupta and another [(2008) 8 SCC 612]** it has been held 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 factor law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

7.5 Further, reliance can be placed on **Inderchand Jain (dead) through L.Rs. vs. Motilal (dead) through L.Rs.** [(2009) 14 SCC 663], wherein it has been reiterated that "*Review is not an appeal in disguise. Review Court cannot sit in appeal over its own order and re-hearing of the matter is impermissible in law.*"

7.6 Reliance was then placed on **Board of Control for Cricket in India vs. Netaji Cricket Club** [(2005) 4 SCC 741]. Note of the earlier decisions was taken by the Hon'ble Supreme Court and it has been observed that "*When there is new discovery of fact, then there is no question of applying the review powers, unless it is shown that certain facts were absolutely not within the knowledge of the appellant.*"

7.7 In **Kamlesh Verma vs. Mayawati and others** [(2013) 8 SCC 320] it has been held by Hon'ble Supreme Court that "change of Advocate and then re-opening of the same point by the new Advocate is impermissible in review. In this case principles have been summarized relating to review jurisdiction. One of the grounds is – ix) Review is not maintainable when the

same relief sought at the time of arguing the main matter had been negatived.

8 Thus, taking into consideration the law it is to be noted here that First Appeal No.908 of 2017 was decided by this Court on 05.08.2019 by giving reasons. Land admeasuring 06 H 52 R owned by the appellant was acquired for the purpose of Nimna Dudhana Project. The Award was passed by Special Land Acquisition Officer under Section 11 of the old Land Acquisition Act on 20.12.2001. Being dissatisfied with the said Award he filed reference and claimed market rate @ Rs.4,000/- per R. He had claimed in all Rs.19,11,375/-. The compensation was then enhanced to Rs.9,50,952/-. Before this Court then it is said that the reference Court ought to have granted compensation @ Rs.5,000/- per R, which was not even the prayer before the reference Court. Note was taken that learned reference Court had taken the evidence and reasons given by it in Land Acquisition Reference No.1094/2010 passed on 12.05.2015 to be the authority and granted market value @ Rs.2,400/- per R in respect of non irrigated land. The claimant had relied on in all five sale instances. One was subsequent to the Notification under Section 4 of the Land Acquisition Act and the reliance by the claimant on the decision in Land Acquisition Reference No.1094/2010 by producing the said Judgment on record appears to have been accepted by

the reference Court and, therefore, the amount of compensation was granted on parity with those claimants in L.A.R. No.1094/2010. Therefore, the said First Appeal was rejected. Now, the review applicants wants to rely on certain other decisions by this Court and the Hon'ble Supreme Court, which they would have pointed out when the matter was heard. There appears to be change in the Advocate which cannot be a ground for review, as aforesaid, there was every opportunity to the appellant to place those decisions on record. Therefore, the present review cannot be in disguise of appeal. The point cannot be so re-opened. Therefore, there is no merit in the review application. It deserves to be dismissed. Accordingly, the **review application** stands dismissed.

9 The amendment is in the nature of ground to challenge the Judgment passed by this Court and, therefore, such amendment cannot be allowed. Hence, **Civil Application No.1728 of 2023** also stands disposed of.

(Smt. Vibha Kankanwadi, J.)