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

MISC. CIVIL APPLICATION NO.520 OF 2021
IN
FIRST APPEAL NO.865 OF 2016

Ramchandra Arjun Bhajipale (dead)
through its P.O.A. and L.R's
Sanjay Ramchandra Bhajipale
Aged about 70 years, Occ. Agriculturist,
R/o. Chichal, Tahsil Paoni,
District Bhandara

1-a) Smt. Lilabai wd/o Ramchandra Bhajipale,
Aged about 70 years,

1-b) Radheshyam s/o Ramchandra Bhajipale,
Aged about 50 years,

1-c) Raman s/o Ramchandra Bhajipale,
Aged about 45 years,

1-d) Sanjay s/o Ramchandra Bhajipale,
Aged about 39 years,

All R/o. Chinchal, Tq. Paoni,
District Bhandara

...**APPLICANTS**

VERSUS

1. The State of Maharashtra,
through Secretary, Ministry of Irrigation,
Mantralaya, Mumbai

2. The Chief Engineer,
V.I.D.C. Sinchan Bhawan,
Nagpur

3. The Executive Engineer,
Gose Khurd Rehabilitation Division,
Bhandara, District Bhandara

4. The Collector,
Collector Office, Bhandara,
District Bhandara

5. The Special Land Acquisition Officer,
V.I.D.C. No.9, Collectorate, Bhandara,
Tahsil and District Bhandara

...NON-APPLICANTS

Shri H.S. Chitaley, Advocate for the applicants.
Shri K.L. Dharmadhikari, AGP for non-applicant Nos.1, 4 and 5.
Ms M. Babhulkar, Advocate h/f Shri M.A. Kadu, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : MARCH 13, 2023.
PRONOUNCED ON : MAY 03, 2023

JUDGMENT :

Heard.

2. The present application has been filed by the applicants in First Appeal No.865/2016 for review on the ground that this Court while allowing the appeal partly by judgment dated 10/02/2021 enhanced compensation at the rate of Rs.2,31,000/- per hectare in respect of acquired irrigated land Gat No.546 and Rs.1,15,500/- per hectare in respect of non-irrigated land, not granted compensation in respect of orange trees. The claim in respect of orange trees was not adjudicated. The further ground raised was that this Court applied the deduction

policy of 65% which is error apparent, and therefore, the judgment is to be reviewed by setting aside the observation.

3. By this application, the applicants claimed review and modification of the judgment dated 10/02/2021 by claiming appropriate compensation for trees and by setting aside the observation regarding the 65% deduction on the value of irrigated land.

4. The said application is resisted by the non-applicants on the ground that the review application itself is not maintainable as there is no error apparent on record. The issue regarding compensation for the trees can be decided by re-hearing of the appeal on the basis of evidence. Under the scope of review detail re-hearing is not permitted. The ground raised by the applicants are not within the purview of review, and therefore, application deserves to be rejected.

5. Heard Shri H.S. Chitaley, learned Counsel for the applicants. He submitted that the review application has been preferred by the legal heirs of the original appellant as there is an error apparent on the face of the record. This Court while its impugned judgment and order had partly allowed the first appeal however, not considered the aspect of compensation for the orange trees and also awarded the enhanced

compensation at 65% deduction on the value of irrigated land which is error apparent and needs to be reviewed. He further submitted that the Joint Measurement Report, the award passed by the Special Land Acquisition Officer, the Judgment of the Reference Court and the evidence of the photographer reveals that there was existence of trees on the land acquired. Therefore, there is an error apparent on the face of record. However, this Court observed that there is no evidence produced to establish the existence of the trees on the land acquired constitutes an error apparent on the face of record. Further this Court has considered a deduction of 65%. The said deduction is contrary to the settled legal position. The deduction is contrary to the law laid down by the Hon'ble Apex Court which stipulates that deduction can be ordered only in cases of infrastructural projects where there is a need to develop the acquired land and not in cases where the acquired land is on account that the same would be subjected to flooding or would be rendered submerged land.

6. In support of his contention, he placed reliance on ***Registrar University of Agricultural Sciences, Dharwad Vs. Balanagoud (dead) byL.R's, AIR OnLine 2003 SC 449, Lal Chand Vs. Union of India and anr. (2009), (2009)15 SCC 769, Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited (2008) 14 SCC 171,***

Haridwar Development Authority Vs. Raghubir Singh and ors. (2010) 11 SCC 581, Narayan Deorao Gore (died) through L.R's.Vs. State of Maharashtra, 2011(3) Mh.L.J. 592, State of Rajasthan and anr. Vs. Surendra Mohnot and ors., AIR 2014 SC 2925, Sk. Abdul Rashid s/o Abdul Latif Vs. State of Maharashtra and ors. in First Appeal 1066/2014 decided on 27/09/2017.

7. *Per contra*, Ms Babhulkar, learned Counsel submitted that a perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought on the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; or such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and on account of some mistake or error apparent on the face of the record or any other sufficient reason. There are limits to the exercise of power of review. An error which is not selfevident 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. 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.

8. In support of her contention she placed reliance on ***(i) Ram Sahu(D) through LR's and ors. Vs. Vinod Kumar Rawat and ors., 2020 (12) SCALE 415, (ii) S. Madhusudhan Reddy Vs. V. Narayana Reddy and ors., 2022 (4) R.C.R. (Civil) 36, (iii) Misc. Civil Application No.639 of 2022*** *(Pundlik s/o Dadaji Pipare Vs. State of Maharashtra and anr.)* ***decided on 21/10/2022, (iv) Rotary Club, Begusarai etc. Vs. State of Bihar and ors., 2000 SCC OnLine Patiala 892, (v) Sirajudheen Vs. Zeenath and ors., 2023 DGLS(SC) 190, (vi) Radhakrishna Co-operative Housing Society Limited and anr. Vs. State of Maharashtra and ors., 2017 DGLS (Bom.) 800, (vii) Chandrashekar (D) bu Lrs and ors. Vs. Land Acquisition Officer and anr. 2011 DGLS(SC) 929.***

9. Heard both the sides. Perused the application.

10. Before entering into the merits it is necessary to see the legal position in respect of review application. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought :

(a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant;

(b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and

(c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

11. Thus, the power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It may not be exercised on the ground that the decision was erroneous on merits as that would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.

12. In the case of ***Haridas Das vs. Usha Rani Banik (Smt.) and others*, *2006(4) Mh.L.J. (S.C.) 14***, while considering the scope and ambit of Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, it is observed and held in paragraph Nos.14 to 18 as under:

> *"14. In Meera Bhanja vs. Nirmala Kumari Choudhury, (1995)1 SCC 1780 it was held that:*
>
> *"It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order XLVII, Rule 1, while dealing with similar jurisdiction available to the High Court while*

seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma speaking through Chinnappa Reddy, J. has made the following pertinent observations:

> *"It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit. That would be in the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of error committed by the Subordinate Court."*

15. A perusal of the Order XLVII, Rule 1 show that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was *not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.*

16. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma (AIR 1979 SC 1047) this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p-390, para 3)

> *"It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC1908) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on*

> *the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court."*

17. The judgment in Aribam's case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale [AIR 1960 SC 137] were also noted:

> *"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from selfevident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."*

18. It is also pertinent to mention the observations of this Court in the case of Parsion Devi v. Sumiri Devi (1997)(8) SCC 715). Relying upon the judgments in the cases of Aribam's (supra) and Smt. Meera Bhanja *(supra) it was observed as under :*

> *"Under Order XLVII, Rule 1, CPC a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the record. 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 XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise."*

13. Thus, an application for review would lie *inter alia* when the order suffers from an error apparent on the face of record and permitting the same to continue would lead to failure of justice. The power of review can also be exercised by the Court on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. An application for review would also lie if the order is passed on account of some mistake. It is well settled that reviewing Court is not an appellate court over its own order. Thus, the powers of review can be

exercised for correction of mistake and such powers can be exercised within the limits of the statutes. The term ‘mistake’ or ‘error’ apparent is discussed by the Honourable Apex Court in the case of ***State of West Bengal and others vs. Kamal Sengupta and another, (2008) 8 SCC 612*** and 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 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.

14. The Honourable Apex Court in the case of ***Ram Sahu (dead) through LRs vs. Vinod Kumar Rawat and others, 2021(3) Mh.L.J. 268*** by referring catena of decisions of the Honourable Apex Court observed that the principles which can be culled out from the above noted judgments are:

> *(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is*

akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

It is further held in the case cited supra that 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.

15. Keeping in mind the aforesaid principles, let us consider the first ground of the applicant. As per the contention of the applicant, that this Court has not adjudicated the claim in respect of orange trees. On perusal of the judgment of this Court delivered on 10/02/2021, this Court has considered that as far as compensation in respect of orange and other trees is concerned he has not produced survey records or any other evidence either documentary or oral to prove existence of trees in the acquired land as on the date of Notification. The appellant has also not examined any valuer. In the absence of such evidence, the appellant is not entitled for any compensation in respect of the trees. Thus, the judgment of this Court shows the reasons in para No.13, why the compensation has not granted towards the trees.

16. On perusal of the judgment of the Reference Court also, the reference Court in para No.19 observed that the applicant claimed that

in his field there were 275 orange trees but 7/12 extracts Exhibits 34 and 35 are of the year 2004 and not of the year 1999. The evidence which have come on record is not sufficient to support the enhanced rate of applicant. The Reference Court further held that the evidence of photographer adduced by the claimant shows that he stated that in that field there were only orange trees which is in contradiction with the claim of the applicant that there were other trees in his fields. Thus, the contention of the applicant that the claim of the applicant regarding the orange trees is not itself adjudicated by the Court is not sustainable. This Court in para No.13 specifically observed that as the claimant has not adduced any evidence, and therefore, the claimant is not entitled to receive the compensation for the trees.

17. It is well settled that the determination of compensation is to be on the basis of yield. There should be evidence in respect of age of the trees, yield of the trees. It is undoubtedly true that the one of the best method of determination of the compensation that claimant has to adduce the evidence by examining Valuer who is the Expert and the compensation is to ascertained on the basis of said valuation report. This court has already considered this aspect while passing the judgment and observed that the claimants has not adduced any evidence. The burden of proof is on the claimant to prove the fact that orange trees

were standing in the field on the date of Notification. As the claimant has not adduced the said evidence and not proved the fact which is adjudicated by this Court by recording the reasoning, therefore, contention of the applicant that the aspect of the compensation for the trees is not adjudicated is not sustainable.

18. In support of the contention, learned Counsel placed reliance on the judgment of *Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd.* (supra) wherein also the Hon'ble Apex Court elaborately discussed about error/mistakes apparent from the record and observed that a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of the record and can be corrected while exercising certiorari jurisdiction. An error cannot be said to be an apparent on the face of the record if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the face of the record means an error which strikes on mere looking and does not need long-drawn-out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. It has, however, been conceded in all

leading cases that it is very difficult to define an "error apparent on the face of the record" precisely, scientifically and with certainty.

19. It is further well settled by the catena of decisions by following the judgment in *Aribam and Meera Bhanja* that under Order 47 Rule 1 of Code of Civil Procedure a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error which is not selfevident 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. In ***Satyanarayan Laxminarayan Hegde Vs. Millikarjun Bhavanappa Tirumale AIR 1960 SC 137*** wherein also it is observed that an error has to be established by a longdrawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from selfevident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. Thus, it is well settled that review proceedings cannot be equated with the original hearing of the case. Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or

results in miscarriage of justice. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error. The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self evident and has to be detected by 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 judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error contemplated under the Rule which is apparent on the face of the record. It must be an error of inadvertence. Even the mere possibility of two views on the subject is not a ground for review.

20. So far as the ground raised in the present application is concerned, this Court has already assigned the reason for non-granting the compensation for the trees. The said issue cannot be dealt under the powers of review as detailed reason and rehearing is required to decide the said aspect. It is not that inadvertently this Court has not granted the compensation for the trees. An error which according to the applicant that this Court has not awarded the compensation for the trees which requires a process of reasoning, and therefore, it cannot be said to

be an error apparent on the face of record. As under the powers of review this Court cannot exercise the powers of appeal, therefore, the grounds raised by the applicant that this Court has not adjudicated the issue regarding the compensation towards tree is not an error apparent but perusal of the judgment shows that while passing the judgment this Court has considered why the claimant / appellant is not entitled for the compensation towards the trees. For getting compensation for the trees, the claimant required to adduce the evidence which he has not adduced, and therefore, compensation was not granted by this Court by assigning the reason.

21. The another ground raised by the applicant is that this Court has enhanced the compensation by applying the deduction @ 65% against the well settled legal position. To support this contention he placed reliance on *Registrar University of Agriculture Sciences* (supra) wherein the Hon'ble Apex Court held that it must be noticed that both the Reference Court and High Court have proceeded on the basis that development costs have to be deducted. The Reference Court proceeds on the footing that the normal deduction for development cost would be 53% to that 12% were to be added for the waiting period. What the Reference Court and the High Court overlook is that in this case there was absolutely no question of making any deduction for development

cost. These were agricultural lands which were acquired for agricultural purposes. The High Court also notes in the judgment that these lands are now being used for a nursery and deducted the costs towards the development. The Hon'ble Apex Court held that it is to be taken into consideration in cases where lands were acquired for development purposes and it takes time to develop the land and development is to be towards other amenities but there can be no deduction for development cost as there are no development costs to be incurred. In another judgment *Lal Chand Vs. Union of India and anr.* (supra) wherein also the Hon'ble Apex Court held that the percentage of "deduction for development" to be made to arrive at the market value of large tracts of undeveloped agricultural land with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated. It is further held by the Hon'ble Apex Court that the "deduction for development" consists of two components. The first is with reference to the area required to be utilised for developmental works and the second is the cost of the development works. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilise around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc. It is further held that therefore, the deduction for the "development factor" to be made with reference to a price of a small plot in a developed layout, to arrive at the cost of undeveloped land, will be far more than the deduction with reference to the price of a small plot in an unauthorised private layout or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure.

22. In the present case, while considering the deduction aspect in para no.12, this Court has observed that the Sale Deed plot is a much smaller plot as compared to the acquired land. It is well known that the size of land constitutes an important factor to determine the market value, as small plots have ready purchasers and fetch higher price as compared to large track of land. Hence, it is necessary to adopt the principle of deduction to arrive at the market value of the large tract of land. By assigning reason that the difference in the size, the deduction 65%, the value of the irrigated land is determined. Thus, this Court taking into consideration that claimant relied upon the sale deed of smaller plots applied the deduction of a 65%. This deduction is in the light of the observation of the Hon'ble Apex court in case of *Lalchand* (supra) relied by the learned Counsel for the appellant wherein para

No.20 the Hon'ble Apex court held that the deduction for the "development factor" to be made with reference to the price of a small plot in a developed layout, to arrive at the cost of undeveloped land, will be far more than the deduction with reference to the price of a small plot in an unauthorised private layout or an industrial layout. The Hon'ble Apex Court also gave some examples and held that the purpose of the aforesaid examples is only to show that the "deduction for development" factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%. Thus, on perusal of the judgment of this Court, this Court has assigned the reason in para No.12 while applying the 65% deduction.

23. Taking into the consideration the scope of review petition, facts of the present case, and the law laid down by the Hon'ble Apex Court, submission made by the learned Counsel Shri Chitaley for the applicants that there are error apparent is not acceptable as 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 elucidation either on 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. Thus, 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 a fact or law.

24. In this view of the matter, the miscellaneous civil application for review has no merits and the same deserves to be rejected. Hence, the same is rejected.

(URMILA JOSHI-PHALKE, J.)

**Divya*