IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION (REVIEW) NO. 29/2023
IN
WRIT PETITION NO. 2882/2019

1. The State of Maharashtra,
   through Department of Revenue & Forests,
   Mantralaya, Mumbai,

2. The Divisional commissioner,
   Nagpur Division, Nagpur &
   Competent Authority.

3. The District Rehabilitation
   Officer/Collector Wardha,
   Office of the Collector, Wardha.

.... **APPLICANTS**

VERSUS

1. Dhanraj Ramesh Tule,
   Aged 34 yrs.,

2. Babarao Domaje Chafale,
   aged 60 yrs.,

3. Suresh Natthuji Walake,
   Aged 69 yrs.,

4. Narendra Shankarrao Shende,
   Aged 71 yrs.,

5. Nana Zolbaji Kubade,
   aged 62 yrs.,

6. Namdeo Natthuji Nasare (since dead)
   through Sumitra Namdeo Nasare,
   aged 58 yrs.,

7. Dnyaneshwar Saduji Kathane (since dead),
   through Arun Dnyaneshwar Kathane,
   aged 46 yrs.,

8. Prabhakar Bapurao Bhujbal,
   aged 64 yrs.,

9. Shrawan Muninda Kohare,
   (Since Dead) through Arun
   Shrawan Kohare, aged 63 yrs.,

10. Laxman Pandurang Belmakar,
    aged 71 yrs.,

11. Narhari Bhamrao Kolhe,
    Aged 54 yrs.,

12. Laxman Aadkuji Kasture,
    aged 72 yrs.,

13. Durgadas Utaamrao Bhandare,
    aged 63 yrs.,

14. Uttam Sakhaji Bhandare,
    aged 72 yrs.,

15. Vaikuntha Sitasam Kamdi,
    aged 69 yrs.,

16. Gangadhar Zolbaji Kuwade,
    Aged 71 yrs.,

17. Dasarath Bhimrao Kasture,
    Aged 73 yrs.,

18. Ramesh Nathuji Walke,
Aged 62 yrs.,

19. Vitthal Haduji Shende,
Aged 69 yrs.,

20. Bhimrao Tulsiram Tule (since dead)
through Dhanraj Ramesh Tule,
aged 34 yrs.,

21. Nanaji Domaji Latkar,
aged 63 yrs.,

22. Marotrao Ramaji Bhange,
Aged 79 yrs..

23. Sunil Narayan Nasre,
aged 46 yrs.,

aged about 42 yrs., All R/o.
Neri Punarvasan, Post Salod,
Hirapur, Tah. & Dist. Wardha,

24. Vidharbha Irrigation Development Corporation
through Executive Engineer, Nimma Wardha
Project Division, Wardha.

....NON-APPLICANTS
(On R.A.)

Mr. S.P. Dharmadhikari, Sr. Advocate with Mr. R. Chitale, Advocate for applicants.
Mr. A.S. Mardikar, Sr. Advocate with Mrs. R. Sirpurkar, Advocate for non-applicants.

CORAM : VINAY JOSHI AND MRS.VRUSHALI V. JOSHI JJ..

JUDGMENT RESERVED ON : 29.01.2024
JUDGMENT PRONOUNCED ON: 09.05.2024

JUDGMENT : (PER COURT)

Heard.

2. The applicants (original respondents) are seeking review of the orders of this Court dated 10.12.2021 and 16.03.2022 passed in Writ Petition Nos. 2882/2019 stating to be an error apparent on the face of the record. Though review is sought of two orders of this Court, however essentially, the applicants are seeking review of the order dated 10.12.2021, since the subsequent order dated 16.03.2022 flows from the earlier order.

3. For better understanding, we may state in brief that the non-applicants Nos. 1 to 23 have initially filed Writ Petition No. 2882/2019 seeking multiple reliefs. The non-applicants are project affected persons. The State Government has compulsorily acquired their land for the Lower Wardha Irrigation Project during the period from 1996 to 2002. In consequence, the non-applicants, though lost their source of livelihood, they did not get alternate

land in accordance with the provisions of the Maharashtra State Project Affected Persons Rehabilitation Act, 1999 ('the Act of 1999). Despite the non-applicants depositing 65% of the compensation, inordinate delay occurred in allotment of the alternate land. In turn, the non-applicants have filed writ petition under Article 226 of the Constitution of India (Writ Petition No. 2882/2019) seeking writ of mandamus for seeking of directions to the State for immediate allotment of the alternate land in accordance with the provisions of the Act of 1999 and compensation for loss of livelihood due to inaction on the part of the State. In the alternative, sought directions to the State to grant the compensation equivalent to the value of alternate land in lieu of the land as per prevailing market rate.

4. After hearing both sides, this Court took a note in its order dated 25.09.2020 that for the period more than 20 years there was no allotment of alternate land despite deposit of 65% of the compensation amount. Prima facie, it was expressed that there is a gross negligence on the part of the concerned officer of the State, therefore, payment of additional compensation needs to be considered. It was followed by subsequent order dated 20.10.2020,

wherein this Court took note about the claim of the non-applicants for grant of lump-sum compensation like the case of the Gosikhurd Project. The relevant para 4 of the order reads as below:-

> *"4. In these circumstances, we are inclined to grant one week time to learned Addl. G. P. to make preparation in the matter. We expect the respondents to reflect upon the proposal of the petitioners making a demand for payment of lump-sum compensation in lieu of alternate land as has been done in other cases in respect of Gosikhurd Project. We would request learned Addl. G. P. to place on record copy of the concerned Policy of the Government in this regard."*

5. Latter on, the matter came up before the Court on 23.07.2021. It was noticed that the non-applicants (project affected persons) have been forfeited with 65% of the compensation awarded to them as well as the acquisition has been taken place before two decades, but there was no allotment of alternate land. Having regard to the said pity situation, this Court has directed the Commissioner, Nagpur Division Nagpur and the competent authority to prepare a plan of action for redressing the grievance of the non-applicants. The Commissioner was directed to initiate measures for allotment of alternate land as per the statutory provisions or in the

alternative grant lump-sum compensation in the like manner as awarded to the project affected persons of the Gosikhurd Project. The Court has also directed the mechanism how the issue is to be sort out. The said order being genesis for review application, the relevant paras 4 and 5 of the order dated 23.07.2021 has been extracted below for ready reference:-

> *"4. To put an end to the controversy, we direct the Commissioner, the respondent no.2, to prepare a plan of action for redressing the grievance of the petitioners. The Commissioner may, in his wisdom, initiate measures to allot alternate lands to the petitioners in accordance with the relevant statutory provisions or grant lump-sum compensation to the petitioners in like manner as such compensation was awarded to the project affected persons of Gosikhurd Project in Bhandara District, as appearing from the Government Resolution dated 18/6/2013.*
>
> *5. For the purpose of preparing the plan of action in terms of this order, the Commissioner will call upon the petitioners to place before him all relevant documents as well as policy decisions taken by the Government from time to time in respect of similarly placed project affected persons earlier. Since the number of petitioners is nearly two dozen, the authorized representative of the petitioners will be entitled to audience before the Commissioner. Once the plan of action is prepared by the Commissioner, and subject to ratification thereof by the State Government*

with or without modifications, we feel that an avenue would open up to put the sufferings of the petitioners at rest. We have no doubt that the Commissioner shall explore an appropriate remedy in the right earnest."

6. In the above background, the applicants (original respondents/State) has filed Civil Application No. 1981/2021 seeking modification of the above order dated 23.07.2021. It was accompanied by an affidavit of the Divisional Commissioner, Nagpur dated 08.09.2021. In the accompanying affidavit, the objection about the maintainability of the petition on account of delay and latches has been raised. It has been stated that the non-applicants are not eligible for the alternate land or compensation for non-compliance of statutory provisions. The State Government has taken a policy decision on 18.01.2018 by evolving the mechanism for fixing the occupancy price of the land to be allotted by charging 12% interest on the 65% amount deposited by the applicants. An affidavit contain that serious efforts have been made by the applicants to comply the directions of this Court. A meeting was held on 18.08.2021 and the applicants were also heard. The applicants' proposal dated 25.08.2021 for allotment of land in benefited zone has been considered, but the same being contrary to

the statutory provisions of law, was not accepted. The non-applicants are not eligible for the alternate land or compensation as per the provisions under Section 16(2) of the Act of 1999. It is stated that the non-applicants have not made an averment whether they have fulfilled the conditions prescribed in Section 16(2)(b) of the Act of 1999 and are eligible for grant of alternate land. It is stated that by suppressing material fact, the non-applicants have obtained order of this Court dated 23.07.2021. Moreover, the non-applicants have not deposited 65% amount of the compensation at the time when the amount was paid to them.

7. The policy decision was taken by the State Government on 17.01.2018 while giving sanction to allocate the remaining land in the benefited zone of Upper Wardha Project of 11 project affected person of the Lower Wardha Project permitted to fix the occupancy price of the land to be allotted by charging 12% interest on the 65% amount deposited by them. It was decided that the land shall be allotted to remaining project affected persons of the Lower Wardha Project on the same terms and conditions. It is stated that the non-applicants have not at all approached to the applicants for availing the benefit of above policy nor challenged the said Government

Resolution dated 18.01.2018. With these contentions, the modification of the order dated 23.07.2021 was sought.

8. While hearing modification application (Civil Application No. 1981/2021), the learned In-charge Government Pleader appearing for the State has not pressed the affidavit filed in support of modification application. Since the affidavit was not pressed, the application for modification was dismissed. However, the Court took note of the situation that the project affected persons of the Lower Wardha Project are without remedy for years together, hence passed further order directing the State to grant lump-sum compensation to the non-applicants like project affected persons of the Gosikhurd Project.

9. Rather the State is aggrieved by the order directing to pay lump-sum compensation in the like manner of the Gosikhurd Project and proposed Wang Marathwadi Project. The entire controversy revolves around said direction, therefore we deem it necessary to reproduce the order of this Court dated 10.12.2021 as below:-

> *"Heard.*
>
> *2. This is an application for modification of the order dated 23.07.2021, at the instance of the respondents in the writ petition. The reasons for seeking modification,*

according to paragraph no.3 of the application, are set out in an accompanying affidavit. The said accompanying affidavit is an affidavit of the Divisional Commissioner, Nagpur dated 08.09.2021.

3. After extensive hearing Ms. Joshi, learned Government Pleader (In-charge) appearing for the applicants submits that the said affidavit would not be pressed.

4. Since the affidavit is not being pressed, there is no question of modification of the order dated 23.07.2021. The consequence is that the order dated 23.07.2021 would stand untouched. The application is, thus, dismissed. No costs.

5. The facts giving rise to the writ petition have been recorded in the previous order dated 25.09.2020, as well as the order dated 23.07.2021. We find from another order dated 20.10.2020, that the coordinate Bench expected the respondents to reflect upon the proposal of the petitioners for payment of "lumpsum compensation in lieu of alternate land as has been done in other cases in respect of Gosikhurd Project". The same concern was taken note by a subsequent coordinate Bench and recorded in the order dated 01.09.2021. On a query as to why the petitioners could not be subjected to similar treatment as has been extended to project affected persons of Gosikhurd Project, Ms. Joshi, Government Pleader (in-charge) has invited our attention to a Government Resolution dated 18.06.2013 and particularly to paragraph

2 thereof. According to her, the proposal which was accepted was to be treated as a special case and in any case not intended to be a precedent.

6. Having heard such submission, we looked into the Government Resolution and read the same in between the lines. No reason appears therefrom as to why the case of the said project affected persons was considered special. The said resolution was adopted only because there was a demand from the project affected persons. We are therefore, clear in our mind that there was no special reason for which the project affected persons of Gosikhurd Project were given the benefit of lumpsum compensation.

7. That apart, our attention has been drawn by Dr. Sirpurkar, learned advocate appearing for the petitioners to the minutes of meeting of several Government functionaries held on 06.03.2019, whereupon a decision was taken qua Wang Marathwadi Project in district Satara to extend the benefit of similar lumpsum payment of compensation to the project affected persons.

8. Despite orders passed by the Court, the respondents have not decided the proposal of the petitioners for payment of lumpsum compensation. The reasons which were offered as explanation in the said affidavit no longer survive in view of the same not being pressed. The other argument of the said resolution being special and not to be used as a precedent has also not impressed us. In such view of the matter, we direct the respondents to proceed for payment of lumpsum compensation in favour of *petitioners in like manner as has been extended to project affected persons of Gosikhurd and proposed for Wang Marathwadi Projects, within a period of three months from the date of receipt of a copy of this order. The decision, taken by the respondents in terms of this order, shall be placed by way of an affidavit on the record of this case by the next date.*

9. The aforesaid order is necessitated considering the fact that it has been long 38 (thirty-eight) years since the acquisition was made and that it is high time that the land owners, who are project affected persons, receive due compensation.

10. List the Writ Petition in the third week of March, 2022 before the appropriate Division Bench.

11. Civil Application [CAW] No.2005/2021 for intervention is not opposed by the petitioners and accordingly, stands allowed. No costs.

12. Registry to take steps."

10. In the wake of above position, the applicant State seeks review of the above order dated 10.12.2021 stating to be an apparent error and against the provisions of law. The learned Senior Counsel Mr. Dharmadhikari has strenuously argued that the order of this Court directing to pay lump-sum compensation like the Gosikhurd Project is against the provisions of the Act of 1999 i.e.

against the law and thus, it needs to be reviewed. It is submitted that the learned In-charge Government Pleader was not authorized by the State for withdrawal of an affidavit and thus, the act of the learned In-charge Government Pleader was illegal. It is submitted that vide impugned order dated 10.12.2021, the Court has granted the relief which was not sought by the non-applicants in Writ Petition No. 2882/2019.

11. The Act of 1999 provides mechanism for rehabilitation. Court cannot grant relief beyond or in-excess than the provisions of law. It is submitted that the Gosikhurd Project was a project having National Importance. As one time major compensation was granted by enhanced rate to the project affected persons of the Gosikhurd Project. Notification dated 18.06.2013 of the Gosikhurd Project itself specifies that as a special case the benefit was granted, and it shall not be considered as a president for other projects. It is argued that having regard to the National Importance and exigency, as a special case compensation was granted in said case by much higher rate. According to the State, if the rate has been granted as per the Gosikhurd Project in each and every project, then there would be huge revenue loss and the State would be bankrupt. It is submitted

that the decision against the provisions of law is a valid ground for invoking review jurisdiction.

12. Per contra, the learned senior counsel Mr. Mardikar opposed this application with equal force. He contended that the modification application was not pressed by the learned In-charge Government Pleader which is binding on the State. He would submit that order under challenge was passed after hearing both sides and thus, it is an order on merit, which cannot be questioned before the same Court under review jurisdiction. The order of payment of lump-sum compensation is not contrary to the provisions of law, but section 14(6) of the Act of 1999 permits to grant lump-sum benefit to the project affected persons who does not opt for alternate land. It is submitted that in rejoinder dated 08.10.2020/14.10.2020, it has been pointed about the benefit given to the project affected persons of the Gosikhurd Project. There is no justification to deny the same benefit to the non-applicants. This Court in its order dated 21.12.2021 has assigned the reasons for grant of benefit like Gosikhurd which is an order on merit and thus, not a subject matter of review.

13. On facts, it is submitted that the non-applicants have deposited 65% of compensation amount within the stipulated period. In response to the submission that, the State has framed policy for grant of compensation vide Resolution dated 18.01.2018, it is stated that it is a mere communication to the Commissioner by the Desk Officer and it was a departmental letter. It was also not the part of pleading in the reply and therefore, it need not be challenged.

14. Mr. Mardikar has seriously challenged the tenability of review stating that the order in question reflects the adjudication on merits and thus, it is not a subject matter of review. It cannot be said that there happened to be an error apparent or a mistake amenable to review jurisdiction. Even if the order is erroneous, it can be challenged in the appeal but certainly not by the same Court by invoking review jurisdiction. With these contentions, review is sought to be rejected.

15. Both the learned counsel have relied on various decisions to support their respective stand. Most of the reported decisions are on the point of scope of review jurisdiction under

Order XLVII read with Section 114 of the Code of Civil Procedure. We deem it appropriate to reproduce certain observations of the Supreme Court in case of **S. Madhusudhan Reddy Vs. V. Narayana Reddy & ors, 2022 SCC Online SC 1034** which has dealt in-extenso, the settled position of law pertaining to review jurisdiction which reads as below:-

> *"18. A glance at the aforesaid provisions makes it clear that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason.*
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> *19. In Col. Avatar Singh Sekhon v. Union of India, this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:*
>
> > *"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error,*

> *manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante and Another v. Sheikh Habib 11 this Court observed :*
>
> *'A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. … The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.' "*

(emphasis added)

20. In Parsion Devi v. Sumitri Devi, stating that an error that is not self-evident and the one that has to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review, this Court held as under:

> *"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. 13 this Court opined:*
>
> *11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact*

that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.'

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. 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 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. In exercise of this jurisdiction under Order 47 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'".

21. The error referred to under the Rule, must be apparent on the face of the record and not one which has to be searched out. While discussing the scope and ambit of Article 137 that empowers the Supreme Court to review its judgments and in the course of discussing the contours of review jurisdiction under Order XLVII Rule 1 of the CPC in Lily Thomas(supra), this Court held as under :

"54. Article 137 empowers this court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 rule 1 of the Code of Civil Procedure which provides:

"1. Application for review of judgment - (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.' Under Order XL Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order XL Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

56. It follows, therefore, 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 review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. ………………"

22. It is also settled law that in exercise of review jurisdiction, the Court cannot reappreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. In Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd., this Court observed as follows:

> *"10. ....In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."*

(emphasis added)

23. Under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. This point has been elucidated in Jain Studios Ltd. V. Shin Satellite Public Co. Ltd. where it was held thus:

> *"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.*
>
> *12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in*

> *my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted.” (emphasis added)*

25. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, this Court was examining an order passed by the Judicial Commissioner who was reviewing an earlier judgment that went in favour of the appellant, while deciding a review application filed by the respondents therein who took a ground that the predecessor Court had overlooked two important documents that showed that the respondents were in possession of the sites through which the appellant had sought easementary rights to access his home-stead. The said appeal was allowed by this Court with the following observations:

> *“3 …It is true as observed by this Court in Shivdeo Singh v. State of Punjab there is nothing in Article 226 of the Constitution to preclude a 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 pulpable 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 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 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."

(emphasis added)

27. In the captioned judgment, the term 'mistake or error apparent' has been discussed in the following words:

"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".

(emphasis added)

30. In Ram Sahu (Dead) Through LRs v. Vinod Kumar Rawat, citing previous decisions and expounding on the *scope and ambit of Section 114 read with Order XLVII Rule 1, this Court has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the Section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order XLVII Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can appellate power be exercised in the guise of exercising the power of review."*

16. The learned counsel appearing for applicants initially stressed on the point that the then learned In-charge Government Pleader has no authority to withdraw/not press the affidavit. It is submitted that unless there are specific instructions by the State, the Government Pleader has no power to withdraw the stand of the Government. It is submitted that another Divisional Commissioner has now filed an affidavit in support of said contention. Mr. Dharmadhikari relied on the decision of the Supreme Court in case of **Himalayan Co-operative Group Housing Society Vs. Balwan Singh & ors., AIR 2015 SC 2867** to contend that the Lawyer must be specifically authorized to settle and compromise a claim. In absence of authority, he has no power to make settlement. Similarly, he relied on the decision of the Supreme Court in case of **Periyar and**

Pareekanni Rubbers Ltd Vs. State of Kerala, AIR 1990 SC 2192 to contend that concession made by the leraned In-charge Government Pleader cannot bind the Government. On the same line, further reliance is placed on the decision of the Supreme Court in case of **Director of Elementary Education, Odisha & ors. Vs. Pramod Kumar Sahoo, AIR 2019 SC 4755** to contend that if concession is given by State Counsel which is contrary to the statutory Rules, it does not bind. Mr. Dharmadhikari also relied on the decision in case of **State of Rajasthan & anr. vs. Surendra Mohnot & ors, (2014) 14 SCC 77** to contend that the order passed on the basis of concession without testing correctness of concession made by the counsel would not sustain.

17. On the other hand, Mr. Mardikar would submit that in presence of Government Officer, the learned In-charge Government Pleader has consciously withdrawn the affidavit and thus, now they cannot be allowed to change the stand. Para 3 of the impugned order dated 10.12.2021 makes it clear that after extensive hearing, Ms. Joshi, the learned In-charge Government Pleader appearing for the State submits that the affidavit would not be pressed. Bare reading indicates that the matter was heard and during course of

hearing, the learned In-charge Government Pleader has not pressed the affidavit.

18. The disputed affidavit dated 08.09.2021 was filed by the Divisional Commissioner whilst the impugned order has been passed in proximity of 10.12.2021. After long gap, review application has been filed in the year 2023 with further affidavit of another Principal Secretary dated 03.08.2023. Assuming that the learned Government Pleader has withdrawn the affidavit without authority, we have considered the matter independently whether the reasons canvassed by the applicants are amenable to the limited jurisdiction of review.

19. We have exhaustively dealt about the scope of review from various decisions. We can cull out that unless the Court is satisfied that there occurs manifest or material error, the review is not tenable. Erroneous decision can be no ground to entertain a review since it is a matter of appeal. If a long drawn process of hearing and reasons are required, a re-hearing is not permissible under guise of review. The Court cannot rehear or sit in appeal on its own decision.

20. Para 5 of the impugned order dated 10.12.2021 indicates that though an affidavit was not pressed, however the learned In-charge Government Pleader has resisted to grant the benefit in terms of Government Resolution dated 18.06.2013. She has also attracted the attention of this Court to para 2 of the Government Resolution stating that as a special case, the concession was granted which cannot be treated as a president. It is abundant clear that apart from withdrawing the affidavit, still the learned In-charge Government Pleader has contested the matter by way of justifying Government Stand that resolution dated 18.06.2013 pertaining to the Goshikhurd Project cannot be applied. We can understand that the learned In-charge Government Pleader has withdrawn the affidavit as well as consented for passing order, but the facts are otherwise as indicated in para 5 of the order that there was resistance of Government and after hearing the matter, this Court has passed an order.

21. Be that as it may, para 6 of the impugned order speaks that this Court has considered the factual aspect and clearly expressed that no special reasons exist to the project affected persons of the Gosikhurd Project in granting of lump-sum

compensation. The said adjudication is after considering the submission of both sides and thus, it cannot be reviewed by simply treating to be error apparent on the face of the record.

22. Mr. Dharmadhikari, strenuously argued that the Act of 1999 does not specify the procedure of granting lump-sum compensation and therefore, the orders which are passed against the provisions of law can be reviewed. Moreover, by placing reliance on the decision of the Supreme Court in case of **R. Muthukumar & ors. vs. Chariman & Managing Director TANGEDCO & ors, 2022 SCC Online SC 151**, it is contended that there could be no negative equality. Without legal basis or jurisdiction, if benefit is accorded then it cannot be perpetuated. In other words, it is submitted that the impugned order is against the provisions of the Act of 1999 which is complete mechanism and thus, the order being apparently illegal requires to be reviewed.

23. On the other hand, Mr. Mardikar took us through Section 14(6) of the Act of 1999 to contend that if the project affected persons do not want alternate land in the beneficial zone then he shall be paid the amount as specified therein. It was

endevoured to state that paying lump-sum compensation is not a foreign and therefore, the order cannot be said to be against the provisions of law. As a matter of fact the Government has accorded certain benefits to project affected persons of the Gosikhurd Project by excess rate. Apparently, it was a policy decision of the Government which cannot be stated to be against the law. The same equation has been applied as per the policy of the Government. We are not ready to accede the submission that the order is against the spirit of the Act of 1999.

24. Though initially the Government has taken a stand that 65% amount of compensation was not deposited by the project affected persons within stipulated period, however, latter on, they conceded about deposit. It is argued on behalf of the State that a decision was taken for grant of compensation at particular rate by Government Resolution dated 18.01.2018 which is not challenged. In response, Mr. Mardikar submitted that letter dated 18.01.2018 is mere internal communication made by the Desk Officer which is not the part of pleading nor communicated and thus, the submission is not tenable.

25. It is argued on behalf of State that writ petition does not have prayer to grant compensation like the Gosikhurd Project and thus, the impugned order travels beyond the scope of the petition. In other words, it is submitted that the Court has granted the relief which was not asked for. According to the State, unless the petition is amended, such relief cannot be granted. It reveals that in the months of October 2020 itself by filing rejoinder, a Gosikhurd Project notification has been brought to the notice. The order of this Court dated 20.10.2020 bears a reference about the claim of non-applicants for payment of lump-sum compensation like the case of the Gosikhurd Project. The petition is seeking various reliefs essentially ventilating their grievance that though the land was compulsorily acquired prior to 20 years neither alternate land was allotted nor compensation was given. The petition bears alternate prayer that they would be given lump-sum payment in lieu of the alternate land. True, there is no specific reference about the Gosikhurd Project, however the petition bears a prayer of lump-sum payment in lieu of alternate land.

26. Speaking truly, there was no necessity for State to seek modification of order dated 23.07.2021. In the said order, this Court

has noted the plight of the project affected persons and directed to prepare a concrete plan of action for the redressal or alternatively grant lump-sum compensation like the Gosikhurd Project. Thus, the alternate way was suggested to the State, but for the reasons best known, modification was sought. After considering the rival submissions, this Court has passed order on merit stating that no distinction can be made to the project affected persons of the Lower Wardha Project and directions have been issued.

27. Since the said order was purely on merits, it cannot be said that it is a manifest error. Marathon arguments have been made by both sides which itself indicate that it is not a case of mere error to be corrected under review jurisdiction. Certainly, the State if aggrieved by the order, has to raise a challenge in appropriate proceeding but not by way of review before the same Court. We are of the considered view that the grounds canvassed for invoking review jurisdiction are not tenable. The contentions or grounds raised are outside the scope of review jurisdiction and thus, the review is not maintainable, hence rejected.

28. Application stand disposed of in above terms.

(MRS.VRUSHALI V. JOSHI, J.) **(VINAY JOSHI, J.)**

Gohane