



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

MISCELLANEOUS CIVIL APPLICATION (REVIEW) NO. 832 OF 2022

IN
FIRST APPEAL NO. 790 OF 2014 (D)

Smt. Lilabai W/o Ramchandra Bhajipale
..VS..

The State of Maharashtra through Secretary, Ministry of Irrigation Department,
Mantralaya, Mumbai-32 and four others

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

Court's or Judge's orders

Mr. H. S. Chitaley, Advocate for applicant.
Mr. P. P. Pendke, Assistant Government Pleader for respondent
Nos.1, 4 and 5,
Mr. M. A. Kadu, Advocate for respondent Nos.2 and 3.

CORAM : SANJAY A. DESHMUKH, J.

DATED : 03rd OCTOBER, 2024

1. Heard.
2. This review application is preferred by the claimant/applicant against the judgment passed by this Court in First Appeal No. 790 of 2014 dated 13.12.2019.
3. Brief facts of the case are as under :

The applicant is agriculturist. His agriculture land bearing Block No.543 admeasuring 1.29 HR., situated at Mouza Chinchal, Tahsil Paoni, District Bhandara was acquired for Gosekhurd Dam/Project Bhandara. An Award dated 14.05.2001 was passed by the Special Land Acquisition Officer. Total compensation amount of Rs.1,00,001/- was awarded to

the claimant. It was challenged by the claimant by preferring Land Acquisition Reference No.51/2006 on the ground that fruit trees planted by the applicant were not considered while awarding compensation by the authority. The location, connectivity, amenity and fertility of the acquired land were also not considered properly. Value of acquired land was of Rs.6,45,000/- but, meager compensation of Rs.1,00,001/- was awarded. The applicant therefore, prayed for enhancement of compensation amount.

4. The applicant could not attend the Court. The Land Acquisition Reference No.51/2006 was dismissed by holding that there is no any evidence to prove that acquired land is having amenities etc. to enhance compensation amount.

5. The First Appeal No.790 of 2014 was preferred by the applicant with a prayer to remand the land reference to the learned Reference Court. The ground for remand was that applicant could not adduce any evidence and she remained absent due to the miscommunication between her and her Advocate. Therefore, she could not lead any evidence before the learned Reference Court. Therefore, the remand of the matter was prayed.

6. Learned Advocate for applicant placed reliance on the judgment of L.A.C. No.31/2006 and L.A.C. No.50/2006 on the ground of parity in which compensation of Rs.20,000/- per hector was enhanced by this Court.

7. This Court in First Appeal No. 790/2014 enhanced compensation amount @ Rs.20,000/- per hectare along with statutory benefits and land reference and appeal were thus partly allowed.

8. Learned Advocate for the applicant pointed out that though there was prayer for remand the reference for fresh decision, it was not considered by this Court while delivering the judgment in appeal. The impugned judgment does not disclose any reason about remand. This is an apparent error on record in the said judgment.

9. Learned Advocate for the applicant further submitted that in the Reference Court, the appellant/claimant was not present for giving evidence. The claimant remained absent as she was not informed by her Advocate to come to Court for giving evidence. The claimant could not get an opportunity to lead evidence which justifies that Reference Application should be remanded for fresh hearing before the learned Reference Court.

10. Learned Advocate for the applicant is relying upon the following authorities :

(i) ***A. V. Subramanian Vs. Union of India & Anr.***, reported (2017) 12 SCC 693, in which it is held that, “all technicalities should give way since they are procedural and which can still be cured.”

(ii) ***First Appeal No. 1066 of 2014, Sk. Abdul Rashid S/o Abdul Latif Vs. The State of Maharashtra and two others***, decided on **27.09.2017**, in which it is held that, “Reference Court should have given full and sufficient opportunity to the claimant to put forth his case and after appreciating the contentions and evidence should have decided the reference”.

11. Learned Advocate for the applicant lastly submitted that there is apparent error on the part of this Court while delivering the impugned judgment under reference which caused injustice to the applicant. He therefore, prayed to set aside the impugned judgment by allowing this review application and to remand the reference to the learned Reference Court.

12. Learned Assistant Government Pleader for respondent No.1 and learned Advocate for respondent Nos.2 and 3 strongly opposed the application and submitted that there is no any apparent error on record on the part of this Court while delivering the impugned judgment. This Court has rightly enhanced compensation @ Rs.20,000/- per hectare on the basis of parity. It was decided on the submission of case laws cited by the appellant’s Advocate. There is no any legal and factual ground to allow this application. It is lastly prayed to reject the application.

13. Learned Advocate for the respondent Nos.2 and 3 is relying upon the following authorities :

(i) ***Ramchandra Arjun Bhajipale (Dead) through LRs. Vs. State of Maharashtra & Ors.***, reported in ***2023 DGLS (Bom.) 2205***, in which it is held that, “the judgment under review jurisdiction 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 or Tribunal on a point of fact or law. Review is not maintainable unless the material error, manifest on the face of the order undermines its soundness or results in miscarriage of justice. An error apparent on the face of record is the basis for consideration of review application”.

(ii) ***S. Madhusudhan Reddy Vs. V. narayan Reddy & Ors.***, reported in ***2022 DGLS(SC) 1035***, in which a law is laid down that, “an erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction.”

(iii) ***S. Murali Sundaram Vs. Jothibai Kannan & Ors.***, reported in ***2023 DGLS(SC) 185***, in which it is held that, “rehearing of the matter is impermissible in law. The power of review can be exercised for correction of a mistake but not to substitute a view. An erroneous order may be subjected to appeal before the higher forum but cannot be a subject matter of review”.

14. Nobody will dispute the *ratio* laid down in the above authorities. However, it is well settled that each case is to be decided on its facts and facts of the case are decisive.

15. Following point arised for determination :

“Is the review of impugned judgment justifiable?”

16. Perused the impugned judgment as well as judgment of the Reference Court. In the impugned judgment, an amount of compensation was enhanced @ Rs.20,000/- per hectare. Though, there is a prayer for remand of the Reference Application to give an opportunity to lead evidence, it was not considered. The reasons are not given in the impugned judgment as to whether remand is justifiable or not particularly when evidence is not adduced by the claimant before the Reference Court. Therefore, in view of the judgment of the Hon’ble Supreme Court in ***A. V. Subramanian*** cited *supra* on behalf of applicant, technicality cannot come in the way to give substantive justice. Further in view of the judgment of this Court in ***Narayan Deorao Gore*** cited *supra* while deciding review application, law is laid down that Reference Court should have given sufficient and full opportunity to the claimant to put-forth his case.

17. The moot question may arise as to whether argument of learned Advocate for the appellant in first appeal to decide appeal on the basis of parity and on the basis of judgment of this Court delivered in L.A.C. No.31/2006 and L.A.C. No.50/2006, the same acquisition of lands amounts to waiver of the prayer of remand of reference to the trial Court or not? It is certainly not waiver of prayer of remand. Because no such argument was made and no such prayer of remand was waived

during the argument. It is not noted in the impugned judgment. The appeal is valuable right of the applicant for which there are no reasons as to why said prayer of remand is not either allowed or rejected by this Court in the impugned judgment. The waiver may be express or implied. However, the impugned judgment does not show that prayer of remand is waived or rejected.

18. It caused injustice to the applicant/claimant who had lost her agriculture land for the Gosekhurd Project, Bhandara. This Court ought to have given reason for allowing or not allowing prayer of remand of the said reference as per judgment of this Court in *Sk. Abdul Rashid S/o Abdul Latif* cited supra on behalf of applicant. Therefore, in these facts and circumstances of the case, the case laws cited *supra* on behalf of respondent supra are not helpful to the respondents hence, those are not relied upon.

19. Thus failing to consider the prayer of remand is an apparent error on record, it deserves to be considered on merit. The application therefore, deserves to be allowed and the impugned judgment deserves to be set aside. The first appeal deserves to be heard afresh to decide it on merit. Therefore, the arguments of learned Advocates for the respondents are not accepted. Hence following order :

- (i) The review application is **allowed**.

- (ii) The impugned judgment passed in First Appeal No. 790 of 2014 dated 13.12.2019 is hereby set aside. The said appeal be scheduled for final hearing on merit on **25.10.2024**.
- (iii) No order as to costs.

(SANJAY A. DESHMUKH, J.)

Learned Advocate Mr. M.A. Kadu for respondent Nos.2 and 3 seeks eight weeks time to prefer Special Leave Petition before the Hon'ble Supreme Court of India against this order.

Eight Weeks time is granted as prayed.

(SANJAY A. DESHMUKH, J.)

Kirtak