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

MISC.CIVIL APPLICATION NO.164/2024
IN
FIRST APPEAL NO.1678/2019

Vidarbha Irrigation Development Corporation, through its Executive Engineer, Arunavati Project, Digras, Taluka Digras, District Yavatmal and anr
..vs..
Laxmikant Yashwant Nilawar and ors

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

Ms.M.V.Babhulkar, Counsel for Applicants.
Shri Gunjan Kothari, Counsel for NA No.1/Claimant.
Ms.T.H.Udeshi, AGP for NA Nos.2& 3/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 27/09/2024
PRONOUNCED ON : 11/10/2024

1. Heard.

2. The present application has been filed by Vidarbha Irrigation Development Corporation, through its Executive Engineer, Arunavati Project, Digras, Taluka Digras, District Yavatmal in First Appeal No.1678/2019 on ground that while allowing the first appeal, this Court has not considered deduction as the claimant is claiming rate of non-agricultural land and the said argument was supported by the decision of the Hon'ble Apex Court in the case of

Chandrashekhar (D) by LRs and ors vs. Land Acquisition Officer and anr, reported in AIR 2012 SC 446 and this Court has already considered the judgment of the Hon'ble Apex Court in the case of **Union of India vs. Premlata**, reported in **2022 (3) ALL MR 281**. In fact, it was submitted by learned counsel for applicants that upper limit of deduction is 75%. Thus, it is an error apparent on the face of record and, therefore, the judgment and order require to be reviewed and compensation is to be awarded after deducting permissible deductions.

3. The applicants claim review and modification of judgment 6.4.2023 by claiming appropriate deduction in the compensation submitting that the compensation is claimed by the claimant @ non-agricultural land and, therefore, upper limit of deduction is 75%.

4. The application is supported by the State.

5. The claimant has resisted the application on ground that the review application itself is not maintainable as there is no error apparent on the face of record. The issue regarding deduction cannot be decided by rehearing of the appeal as under the scope of review, rehearing is not

permissible.

6. Learned counsel Ms.M.V.Babhulkar for applicants, reiterated contentions that as the claimant has claimed rate of non-agricultural land and upper permissible limit is 75%. This aspect has not been considered by this Court and the appeal was allowed. She submitted that the ground raised by applicants in the review application is a law point and in view of that, the application deserves to be allowed.

7. Learned Assistant Government Pleader Ms.T.H.Udeshi for non-applicant Nos.2 and 3/State, supported contentions made by learned counsel for applicants.

8. Learned counsel Shri Gunjan Kothari for non-applicant No.1/claimant, pointed out that the aspect of deduction is considered by this Court in paragraph No.18 of the judgment and, therefore, the application for review deserves to be rejected.

9. Having heard learned counsel appearing for respective parties and perused the material on record, before entering into merits, it is necessary to see the legal

position in respect of review application.

10. Perusal of Order XLVII Rule 1 of the Code of Civil Procedure 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, power of review may be exercised on the discovery of new and important matter or evidence which, after exercise of due diligence was not within knowledge of person seeking review or could not be produced by him at the time when order was made. It may not be exercised on the ground that decision was erroneous on merits as that would be 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 subordinate Court.

12. Thus, an application for review would lie *inter alia* when an 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 person seeking 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.

13. Thus, powers of review can be exercised for correction of mistake and such powers can be exercised within limits of statutes.

14. Term ‘mistake’ or ‘error’ apparent is discussed by the Hon’ble Apex Court in the case of **State of West Bengal and others vs. Kamal Sengupta and another, (2008) 8 SCC 612** and observed that 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 a detailed examination, scrutiny and elucidation either of 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 XLVII Rule 1 of the Code 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.

15. The Hon’ble 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 Hon’ble Apex Court observed that 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 that to appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 of the Code 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. Bare reading of Section 114 of the Code, shows that the said substantive power of review under Section 114 of the Code 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 XLVII Rule 1 of the Code.

16. Keeping in mind principles, let us consider the ground raised by applicants.

17. The ground raised by applicants is that the aspect of deduction is not considered by this Court while allowing the appeal. In the judgment of this Court, in paragraph No.18, it is specifically observed that evidence adduced by the claimant shows that the land of the claimant is surrounded by non-agricultural lands and having the same potentiality. It is further observed that in the similar appeal bearing No.1106/2012, this Court considered the aspect of deduction towards the development and observed that the land is observed for the purpose of erection of minor canal of Arunawati Project. In this view of the matter, the basic

infrastructure has already been erected as the land is abutting the public road i.e. Borgaon Road. It has come in the evidence that residential colonies by name Arunawati Colony are already existing there. So, there is no need to grant deduction. Thus, on the basis of the earlier decision of this Court wherein issue of deduction has already been considered and compensation is awarded @ Rs.123/- per square feet without any deduction. In view of that, it is held that the claimant is also entitled to receive compensation on the ground of parity in view of the judgment of this Court in First Appeal No.1106/2002.

18. The aspect of deduction is also considered in the light of the decision in the case of **Union of India vs. Premlata**, reported in **2022 (3) ALL MR 281** wherein it has been held that exemplar relied upon by the land owners especially pertains to the very small plots distinguishing features noticed in the land in sale deeds is not present in the acquired land - considering the aforesaid facts and circumstances, relevant factors 40% deduction is ordered to be made towards development charges.

19. Thus, considering fact that the entire infrastructure is already available, no deduction is required

and awarded the compensation on the basis of the earlier decision of this Court delivered in similar facts and circumstances.

20. It is well settled that under Order XLVII Rule 1 of the Code ,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 of the Code.

21. Thus, so far as ground raised in the present applicant is concerned, this Court has already assigned reason for non granting deduction. The said issue cannot be dealt under the power of review as this aspect is already considered by this Court.

22. Taking into consideration the scope of review petition, facts of the present case and the law laid down by the Hon'ble Apex Court, submission of learned counsel for applicants, that there is an error apparent, is not acceptable as 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 a detailed examination, scrutiny and elucidation either of facts or 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 XLVII Rule 1 of the Code

23. In this view of the matter, the Misc. Civil Application for review has no merits and deserves to be rejected and the same is **rejected**.

Misc. Civil Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!