



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
MISC. CIVIL APPLICATION (REVIEW) NO. 924 OF 2024
IN
WRIT PETITION NO. 4039 OF 2023

(Shri Zamin s/o Sheikh Mohsinali Amin Bohari & anr. vs. State of Maharashtra and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr.Shrihari Ane, Senior Advocate (through video conferencing)
a/b Mr.S.S.Ghate, Advocate for the petitioners.
Mr.A.M.Ghogare, Assistant Government Pleader for the
respondent Nos.1 and 2.

CORAM : VINAY JOSHI AND SMT.M.S.JAWALKAR, JJ.

DATE : OCTOBER 15, 2024

- 1) Heard Mr.Ane, learned Senior Counsel through video conferencing and considered the submissions.
- 2) This is an application in terms of Order XLVII of the Civil Procedure Code, 1908 by which review has been sought of the judgment and order dated 10/09/2024 passed in Writ Petition No.4039/2023.
- 3) The original petition was filed by land owners claiming declaration of lapsing of the reservation in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the Act of 2013'). The petitioners claim that both conditions as contemplated under sub clause (2) of Section 24 have not been complied with, meaning thereby neither the physical possession was taken nor compensation has been paid and thus, due to deeming effect, the reservation stood lapsed.
- 4) We have earlier heard the elaborate submissions of both sides and after considered the factual aspect and various precedents, concluded that both conditions have been complied

with, thus there is no lapsing, resulting into dismissal of the petition. When the petition was dismissed, the petitioners sought time to approach to the Supreme Court, however, on our query it is clarified that the petitioners did not approach to the Supreme Court, but choses to seek review of the order of this Court on account of error apparent on the face of record.

5) Learned Senior Counsel took us through the possession receipt of the year 2006, to contend that the possession receipt was issued by Special Land Acquisition Officer, Vidarbha Irrigation Department, which was not the acquiring body. Secondly, it is canvassed that the authorities have failed to satisfy as to whether possession was taken in terms of Section 12 or 16 of the Act of 2013, meaning thereby the stage of possession has not be clarified. It is pointed out that the petitioners are still in possession and merely by laying a road from one of the corner of the huge piece of land does not amount to taking of possession. It has been argued that vesting of a property had a different connotation in the eyes of law than taking of possession, which implies by themselves as taking physical possession. It is argued that this Court did not consider the vital aspect of possession while delineating the said aspect in para 32 of the decision. It is submitted that an error of jurisdiction rather error on facts has been committed which requires to be reviewed.

6) At the inception, we remind ourselves regarding the self-impose limitation on the Court while entertaining the review petition. Needless to say that the review cannot be a sort of rehearing of the matter like appeal. The Hon'ble Supreme Court has time and again expressed that review cannot be termed as an appeal in disguise, when elaborate hearing is required, it would be outside the scope of review. If the error

struck at the face of record, then it could be entertained under review jurisdiction. The same Court cannot sit in appeal and re-appreciate the facts. Incorrect decision or a wrong application of law cannot be a ground of review.

7) While deciding the petition, we have considered the documents, as well as expressed our opinion that possession was taken. Moreover, while considering the aspect of possession, in para 31 of the decision, we have followed the dictum laid down by Hon'ble Supreme Court in the case of ***Land and Building Department through Secretary and another vs. Attro Devi and others, AIR 2023 SC 1964.***

8) There may be some arguable points, but to our mind certainly we cannot reopen the issue, since it is outside the scope of review. We are unable to see any error which could be said as apparent error. Therefore, we are not inclined to entertain the review, hence review petition stands dismissed.

9) When we dismissed the review application, interim relief is sought on account of several inconveniences which would have been caused to the petitioners. It is submitted that applicants/petitioners are running a petrol pump dealership and they are in possession of a constructed portion, in case the possession has been taken abruptly, irreparable loss would be caused to them.

10) We are afraid that we could grant such interim relief when we concluded that the review is not maintainable, in view of that we also rejected the prayer for grant of interim relief.

(SMT.M.S.JAWALKAR, J.)

(VINAY JOSHI, J.)