

(2011) 04 BOM CK 0017

In the Bombay High Court

Case No : Civil Review Applications No"s. 4, 5 and 6 of 2011

Shri. Balcrisna Shivram Naik Gaonkar

APPELLANT

Vs

Spl. L. ACQ. Officer S.I.P.I.D. Complex Margao and Another

 Mrs. Seema Bhiso Naik Gaonkar Vs Spl. Land ACQ.
Officer and Another

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 132, 133, 136
Land Acquisition Act, 1894 — Section 18, 26, 28A, 54

Citation : (2011) 04 BOM CK 0017

Hon'ble Judges : S.C. Dharmadhikari, J;F.M. Reis, J

Bench : Division Bench

Advocate : Shivan Dessai, for the Appellant; S. Vahidulla, Government
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Reis, J.—All the above applications for review were taken up for hearing together as they seek to review a common judgment dated 20/11/2008 passed by the Division Bench of this Court dated 20/11/2008 in First Appeals Nos.105/1998, 106/1998 and 16/1999 on similar grounds. The review applications have been filed by the applicants, as according to them there is an error apparent on the face of record in the said judgment and, therefore, it is a fit case to review the impugned judgment. It is further their case that the original appellants/respondents herein had preferred an appeal bearing First Appeal No. 106/1998 against the judgment and award dated 6/04/1998 passed by the learned Additional District Judge, South Goa at Margao in Land Acquisition Case No. 89/1993. Another appeal bearing First Appeal No. 16/1999 was preferred by the original appellants/respondents herein challenging the judgment and award dated 6/04/1998 passed by the learned Additional District Judge, South Goa at Margao in Land Acquisition Case No. 91/1993. The third appeal was

preferred by the original appellants/respondents herein bearing First Appeal No. 105/1998 challenging the judgment and award dated 6/04/1998 passed by the learned Additional District Judge, South Goa, Margao in Land Acquisition Case No. 90/1993. It is further their case that in all the said judgments dated 6/04/1998, passed in favour of the applicants herein, the learned Reference Court had awarded the compensation for the land acquired at the rate of Rs. 41/- per square metre, but however, the Division Bench vide judgment and order dated 20/11/2008 allowed the First Appeals filed by the respondents herein and set aside the impugned judgments dated 6/04/1998, on the basis of the judgment of another Division Bench of this Court dated 29/06/2004 passed in First Appeal No. 89/1999 along with Cross-objections No. 3/2000. It is further their case that the said judgment and order dated 29/06/2004, passed in First Appeal No. 89/1999 along with Cross-objection No. 3/2000 was challenged by the original claimants therein before the Hon''ble Apex Court in Civil Appeal No. 1318 of 2007 and by judgment and order dated 16/09/2010, the Hon''ble Apex Court allowed the special leave petition. It is therefore the contention of the applicants that the claim of the applicants is covered and governed by the judgment and order dated 16/09/2010 passed by the Hon''ble Apex Court. It is contended by the applicants that at the time of passing the impugned judgment and order by the Division Bench of this Court, Civil Appeal No. 1318/2007 was pending before the Hon''ble Apex Court and that the Division Bench had committed an error apparent on the face of the record by allowing the appeals of the original appellants, as the judgment relied upon by this Court dated 29/06/2004 passed in First Appeal No. 89/1999 along with Cross-objections was challenged before the Hon''ble Apex Court. It is further their case that in view of the said judgment passed by the Apex Court dated 16/09/2010, the presumptions on which the impugned judgment and order dated 20/11/2008 was passed is erroneous and is an error apparent on the face of record. It is further their contention that relying upon the judgment passed by the Apex Court dated 16/09/2010, the applicants are entitled to compensation at the rate of Rs. 28/- per square metre.

2. Along with the said application, the applicants have also filed an application for condonation of delay which was allowed by order dated 8/03/2011 passed in Miscellaneous Civil Application No. 235/2011.

3. Shri Shivan Dessai, the learned Counsel appearing for the applicants has pointed out that the only ground on which the appeal preferred by the original appellants/respondents herein was allowed was on the basis of the judgment of the Division Bench of this Court dated 29/06/2004, which was already challenged by the original claimants therein before the Apex Court and, as such, this Court has committed an error relying upon the said judgment which had not become final. The learned Counsel further pointed out that the said judgment relied upon by the appellants passed by this Court has been set aside by the Apex Court by judgment and order dated 16/09/2010 passed in Civil Appeal No. 1318/2007 and as such there is an error apparent on the face of record which would require that

the impugned judgment passed by this Court be reviewed and the compensation be awarded to the applicants at the rate of Rs. 28/-per square metre. The learned Counsel further pointed out that in any event the applicants would be entitled for seeking a redetermination of the compensation of the land acquired in view of Section 28(A) of the Land Acquisition Act, 1894 and as such the applicants should be given a liberty to file an application before the Land Acquisition Officer under the said provisions of law. The learned Counsel further submitted that even subsequent events can be considered to review a judgment and considering the said judgment of the Apex Court which has been passed subsequently, this Court can grant the review of the impugned judgment passed by the Division Bench. The learned Counsel further pointed out that this Court has committed a mistake in relying upon the judgment dated 29/06/2004 while passing the impugned judgment when the SLP challenging the said judgment was already pending before the Apex Court and in view of the said mistake, this Court ought to review the impugned judgment, and as such the application for review deserves to be granted and the impugned judgment be accordingly reviewed. The learned Counsel relied upon the judgment of the Apex Court reported in Haridas Das Vs. Smt. Usha Rani Banik and Others, .

4. On the other hand, Shri Vahidulla, the learned Government Advocate appearing for the respondents has submitted that there is no error apparent on the face of record which would require the review of the impugned judgment. The learned Counsel took us through the provisions of Order 47 of the CPC and pointed out that merely because the judgment passed by this Court is based upon the judgment which has been reversed or modified by subsequent decision of the superior Court in any other case shall not be considered as a ground for review. The learned Counsel further submitted that the judgment relied upon by the learned Counsel for the applicants is not at all applicable to the facts and circumstances of the case. He, accordingly, submitted that the application deserves to be rejected.

5. We have perused the records and considered submission of the learned Counsel appearing for the applicants and the respondents. Order XLVII, Rule 1 of the CPC provides as under:

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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of the superior Court in any other case, shall not be a ground for the review of such judgment.]

6. On perusal of the explanation to the said provision, of CPC we find that merely because the decision was passed based on the judgment which has been reversed or modified by a subsequent decision of the superior Court in any other case shall not be a ground for review of the impugned judgment. In the present case, this Court while passing the impugned judgment dated 20/11/2008 has relied upon the judgment of the Division Bench of this Court dated 29/06/2004 passed in First Appeal No. 89/1999 along with Cross-objection No. 3/2000. Merely because the said judgment passed by the Division Bench of this Court dated 29/06/2004 was specifically reversed by the Hon'ble Apex Court would not be a ground to review the impugned judgment dated 29/11/2008. As such, no ground for review is available to the applicants within the provisions of Order 47, Rule 1 of the Civil Procedure Code. The decision relied upon by the learned Counsel appearing for the applicants is not at all applicable to the facts and circumstances of the above case.

7. The Apex Court in the judgment reported in Des Raj (Deceased) through L.Rs. and Others Vs. Union of India (UOI) and Another, , has inter alia held at paras 5 & 14 thus:

5. In the impugned judgments, the High Court has taken note of the fact that the appellants did not challenge the judgment of the High Court dated 11-10-1984 in appeal, as was done by Pratap Singh and others. As a result, judgment and decree dated 11-10-1984 in their cases became final. In the impugned judgment, the High Court has stated thus:

It is pertinent to note that the applicants herein, namely, the appellants in RFAs Nos. 143 of 1975 and 130 of 1975, did not challenge the judgment dated 11-10-1984 in appeal, as was done by Pratap Singh and others. As a result, judgment and decree dated 11-10-1984 in their case became final.

14. Admittedly, the appellants in these cases did seek for reference u/s 18 of the Act; filed appeals before the High Court and after the High Court delivered the

judgment on 11-10-1984, did not challenge the same. The applications were not made u/s 28A of the Act within the prescribed period of limitation also in these cases. At any rate, the grounds raised in the review applications were not grounds which could be accepted to review or modify the judgment of the High Court dated 11-10-1984. In our view, the High Court was right in dismissing their review applications for the reasons stated in the impugned judgments.

8. In view of the said judgment of the Apex Court, we find that no ground for review is available to the applicants in the present case.

9. Dealing with the contention of the learned Counsel appearing for the applicants that the applicants should be given liberty to file an application u/s 28A of the Land Acquisition Act, 1894, we find that no such occasion would arise in the present case as admittedly the applicants had already preferred an application for reference u/s 18 of the said Act. The Apex Court in the said judgment in the case of *Des Raj v. Union of India* (supra) has held at para 13 thus:

13. This Court again in the case of *Babua Ram v. State of U.P.* following the decision in *Scheduled Caste Coop. Land Owning Society Ltd.*, in para 36, has stated thus:

36. The next question is whether an interested person who sought and secured reference u/s 18 but was either unsuccessful and filed no appeal or had carried in appeal but unsuccessful, would be entitled to redetermination when the compensation was enhanced by the appellate court either u/s 54 or on further appeal under Articles 132, 133 and 136 of the Constitution. In *Mewa Ram* case this Court held in paragraph 5 that Section 28A provides for the determination of amount of compensation subject to the conditions laid down therein are fulfilled. For such redetermination, the forum is the Collector and the application has to be made before him within 30 days from the date of the award u/s 26 and the right is restricted to persons who had not applied for reference u/s 18 of the Act. If these conditions are satisfied, the petitioner could have availed of the remedy provided u/s 28A of the Act.

10. Considering the said judgment of the Apex Court, the question of granting any liberty to the applicants to file an application u/s 28A of the said Act would not arise. In view of the above, we find no merit in the present applications and, as such, all the applications stands dismissed.