IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 491 OF 2018

VASANT RAMNARAYAN DARAK
VERSUS
THE COLLECTOR AND SPECIAL LAND ACQUISITION OFFICER NO15
AHMEDNAGAR

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Advocate for the Petitioner : Shri Shirsath P.B..
AGP for the Respondent : Shri S.K.Tambe.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th January, 2018

<u>Per Court</u>:

1 The Petitioner is aggrieved by the order dated 27.07.2017 passed by the Civil Court in Land Acquisition Application No.41/2009, which has been subsequently renumbered as Miscellaneous Civil Application No.129/2015. By the impugned order, the application filed by the Petitioner was rejected.

2 I have considered the strenuous submissions of the learned Advocate for the Petitioner, who has relied upon the following judgments :-

(a) Srihari (dead) through L.R. Ch. Niveditha Reddy vs. Syed Maqdoom Shah and others, 2015 (3) Mh.L.J. 582 (SC).

(b) Tulashiram Nivarutthi Shendage and others vs. Taluka Legal

Services Authority, Malshiras and others, 2013 (4) Mh.L.J. 796.

3 The Reference Court, in the land acquisition matters, had delivered it's award on 22.07.2004 in LAR No.38/2000. The compensation was accordingly, paid to the Petitioner. The Petitioner, by the application bearing No.41/2009, which is renumbered as Miscellaneous Civil Application No.129/2015, sought correction in the award by contending that the deductions towards development charges at the rate of 30% should not have been done as a non agricultural land is not liable for such deductions since they were paid earlier. The deduction carried out was an error committed by the Reference Court and the award delivered by it, needs to be corrected.

4 In *Srihari case (supra)*, the Honourable Supreme Court was dealing with the scope of Section 152 of the Code of Civil Procedure permitting the correction in the clerical or arithmetical mistakes in the judgments, decrees or orders. It was held that if arithmetic or clerical mistakes are to be corrected, the same Court or Authority could do so.

5 In the instant case, the issue is as to whether, the development charges ranging between 25% to 50% on the basis of which, the LAR Court concluded that 30% would be appropriate deduction, can be said to be a clerical mistake. In my view, the analysis of the LAR Court of the evidence recorded before it, led to a judicial conclusion. In choosing

between the range of 25% to 50%, the LAR Court concluded that considering the evidence on record, the deduction of 30% would be appropriate. This conclusion, based on evidence, cannot be said to be an arithmetic or clerical mistake.

6 In *Tulashiram Nivarutthi Shendage (supra)*, the learned Division Bench of this Court was dealing with the compromise in Maha Lok Adalat in the land acquisition case. After settlement, the terms were arrived at and certain figures and percentages were mentioned. In the award based on the compromise terms, a mathematical mistake occurred in computing the exact amount to be paid. This was not based on any adjudication. In this backdrop, it was ordered that the Court which delivered the award based on the compromise terms, would conduct a proper arithmetical calculation as the mistake was purely arithmetical.

7 In the above backdrop, both these judgments would not be of any assistance to the Petitioner.

8 The Trial Court has concluded that the view taken by the LAR Court on the basis of the evidence, cannot be corrected by terming the said conclusion to be an arithmetic or clerical mistake. I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

kps **(RAVINDRA V. GHUGE, J.)**