

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO. 761 OF 2020**

**Petitioner** Vishnu S/o Apparao Lavate  
Age: 52 Years, Occu: Agricultural,  
R/o. Turori, Tq. Omerga,  
District: Osmanabad.

Versus

**Respondents** 1. The Union of India,  
through the Secretary Department of Road  
Transport and Highways, Transport Bhavan, 1  
Parliament Road, New Delhi.

2. The Project Director, Bhartiya Rashtriya  
Rajmarg Pradhikaran Pariyojana Karyanwayan,  
EKAE, Solapur, Dist-Solapur.

3. The Competent Authority cum Deputy  
Collector, Land Acquisition (Manjara Project),  
Osmanabad, Dist – Osmanabad.

4. The District Superintendent of Land  
Record, Osmanabad, Dist. Osmanabad

5. The Deputy Superintendent of Land  
Records, Omerga, Tq. Omerga,  
District: Osmanabad.

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Dr. Tawshikar Swapnil D. Advocate for the Petitioner  
Mr. A.B. Dhongale, Advocate for Respondent Nos.1 & 3  
Mr. Arun V. Rakh & Hinge Deshmukh, Advocate for Respondent No.2  
Mrs. V. N. Patil Jadhav, AGP for Respondent Nos.4 & 5

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**CORAM : RAVINDRA V. GHUGE &  
AVINASH G. GHAROTE, JJ.**

JUDGMENT RESERVED ON : 28.06.2021  
JUDGMENT PRONOUNCED ON : 06.07.2021

**JUDGMENT : ( PER AVINASH G. GHAROTE, J.)**

1. By the present petition, the petitioner seeks to quash the award passed by the respondent No.2/Project Director, Bhartiya Rashtriya Rajmarg Pradhikaran Pariyojana Karyanwayan, EKAE dated 05.09.2013, to the extent it affects the present petitioner. Dr. Swapnil Tawshikar, learned counsel for the petitioner claims, that the petitioner is the owner of Survey No.36/2, situated at Village Turori, Taluka Omerga, District Osmanabad, whose land to the extent of 0.14 R. out of the above Survey No.36/2, was affected by road widening of the National Highway No.9 (New No.65), however the award which has been passed on 05.09.2013, grants compensation for the area admeasuring 0.01 R. of land instead of 0.14 R. It is thus submitted, that the award to the above extent, is required to be quashed and set aside and the respondent No.3 is statutorily bound to pass a fresh award, in respect of the balance land. Learned counsel invites our attention, to the communication dated 17.07.2009, of the Competent Authority, in which it is admitted, that as per the report submitted by

the Deputy Superintendent Land Record, Omerga, the acquired area, has been incorrectly shown as 100 sq.mtr. instead of 1038 sq.mtr. It further shows that compensation for 100 sq.mtr., has already been received by the petitioner and compensation for balance area of 938 sq.mtr. is to be paid. Mr. Swapnil Tawshikar therefore submits, that even otherwise presuming the correctness of this communication dated 17.07.2019, compensation for the balance area of 938 sq. mtr., is admittedly not paid, which is required to be paid.

2. Mr. A.B. Dhongale learned counsel for respondent Nos. 1 & 3, invites our attention to the submissions filed on record on behalf of the respondent No.3 to contend, that there were different joint measurement reports by the Deputy Superintendent of Land Records, Omerga, in respect of the extent of land of the petitioner, which was under acquisition and therefore, by communication dated 03.04.2019, a final joint measurement report was sought which has been submitted on 20.05.2021, which indicates, that the extent of area affected by the project, was 1038 sq. mtrs. out of Survey No.36/2 and not 0.14 R. A copy of the report has been placed on record by the respondent No. 3, as Annexure R-1, which confirms the above position.

3. Though Dr. Swapnil Tawshikar learned counsel for the petitioner, vehemently argues, that land to the extent of 0.14 HR out of entire land of Survey No.36/2 is affected, that is a question of fact, which a writ court cannot go into. That apart, the table of joint measurements placed on record by the respondent No.3 along with the communication dated 20.05.2019 at Annexure R-1, indicates, that though at one point of time, the extent of land affected by the acquisition in respect of the petitioner, was shown as 1400 sq. mtrs., however, the final measurement shows it to be 1038 sq. mtrs. and the same shall have to be considered as the correct measurement as it has been jointly done. Admittedly, the petitioner has been paid compensation in respect of 100 sq. mtrs. of land, out of the land of Survey No.36/2 and thus what is payable would be compensation to the extent of  $1038 - 100 = 938$  sq. mtrs.

4. The contention of Dr. Swapnil Tawshikar, that the award dated 05.09.2013, is therefore required to be quashed and set aside, as claimed in prayer clause 'B', however, cannot be accepted, as the award would continue to hold good in respect of 100 sq. mtrs. of land belonging to the petitioner from and out of the land of Survey No.36/2, to which the petitioner claims ownership, which is a part and parcel of the land of Survey No.36. The relief therefore as

claimed in prayer clause 'B', will have to be rejected and is accordingly rejected.

5. Dr. Swapnil Tawshikar, thereafter, submits, that the respondent No.3, is liable to correct the award dated 05.09.2013, so as to show the correct area of acquisition. That also however cannot be directed, for the reason, that in **Bhupendrasingh Vs. The Competent Authority for National Highway No.6 & Ors., 2020 (2) BCR 296**, to which one of us (A.G. Gharote, J.) was a party, it has been held, that the Competent Authority, under the National Highways Act, 1950 has no power to review its award or correct any clerical or arithmetical mistakes therein under the Provisions of the National Highway Act, 1956 as it is not a Court nor the powers, under Section 33 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013, are available to it. Thus no direction can be issued to the respondent No.3, to correct the award dated 05.09.2013 so as to include the land admeasuring 9.38 sq. mtrs. belonging to the petitioner.

6. It would however, considering the admitted position on record, that land to the extent of 938 sq. mtrs. belonging to the petitioner, which is a part of land of Survey No.36, has been taken over by the respondent No.3 for the road widening project, be

necessary, to direct the respondent No.3 to pass a fresh award, in respect of the extent of land, admeasuring 938 sq. mtrs. so that, the compensation in respect thereof would be payable to the petitioner.

7. The Writ Petition is, therefore, partly allowed. The respondent No.3, is directed to pass an award, in respect of land admeasuring 938 sq. mtrs., from and out of the land of Survey No.36/2, situated at Village Turori, Taluka Omerga, District Osmanabad, in favour of the petitioner, in case, there are no other claimants in respect of the said land. Rule to the above extent is made absolute. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

(RAVINDRA V. GHUGE, J.)