

BGP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 48 OF 2022
IN
CIVIL WRIT PETITION NO. 12347 OF 2019
WITH
INTERIM APPLICATION NO. 9994 OF 2022
IN
REVIEW PETITION NO. 48 OF 2022**

Digitally
signed by
BALAJI
GOVINDRAO
PANCHAL
Date:
2022.07.25
12:23:59
+0530

UNION OF INDIA, MINISTRY OF DEFENSE,
THROUGH DEFENCE ESTATES OFFICER
V/s.

....PETITIONER

SMT. LILABEN BHARATBHAT PATEL
THROUGH ATTORNEY B. N. PATEL AND ORS

.....RESPONDENTS

Mr. Yogeshwar Bhate i/b Kedar Dighe Advocate for the Petitioner
Mr. A. B. Kadam AGP for Respondent nos. 2 & 3
Mr. Akshay Kandarkar i/b Gauri Godse for Respondent no. 1

**CORAM : NITIN W. SAMBRE, J.
DATE: JUNE 30, 2022.**

P.C.:

1. Union of India has taken out present Application seeking review of the order dated 04/01/2022 passed by this Court in Writ Petition No. 12347/2019. Said Petition was preferred by Applicant questioning the order dated 18/03/2019 delivered by 5th Civil Judge Senior Division, Thane in Special Darkhast No. 22/2012 whereby calculation Exh. 52 were accepted in relation to compensation to be released to the Respondent-land owner with further directions to

the Applicant to deposit the amount of compensation of Rs. 41,17,903/- with interest @ 15% on amount of Rs. 20,35,255/- as mentioned in coloumn no. 32 on Exh. 52 w.e.f. 20/10/2018 till its realization.

2. Respondent-land owner's private land was acquired for the Defence (Air Force) and the compensation thereof was taken under urgency clause. When estimated, 80% compensation was deposited with Special Land Acquisition Officer.

3. It is claimed that on 13/12/1986, balance amount of compensation was also deposited.

4. In Reference under Section 18 of the Land Acquisition Act, Judgment was delivered on 20/07/2002 thereby enhancing the compensation. It appears that said order has attained finality against the Applicant.

5. Since the amount was not paid, Darkhast proceedings were taken out being 22/2012. In the said Darkhast proceedings, Decree holder was also Applicants Judgment-Debtor were directed to place on record their respective calculations.

6. Based on the same, order came to be passed on 18/03/2016 by the Executing Court thereby accepting the calculations of the Respondents.

7. Petition preferred by Applicant being Writ Petition No. 12347/2019 was dismissed by this Court which has led to filing of the present Review Petition.

8. Amongst other the review is sought on the ground that there is an error apparent on the face of the record as calculations tendered by the decree holder were incorrect. It is claimed that the respondent has applied for grant of solatium on the market value determined under Section 23(1) and interest under Section 23(1-A) of the Land Acquisition Act. It is further claimed that area to the extent of 12.41.9 hectors was acquired and area to the extent of 2.02 hectors was abandoned. According to counsel for Union of India the possession of the land to the extent of 10.39.9 hector was taken. As such, according to him, there is error in calculation. He would further urge that the calculation provided by the decree holder is contrary to the judgment in the matter of Guruprit Singh which was already referred to.

9. Counsel for the respondent No.1 would support the order impugned of which review is sought. According to him, the order in categorical terms deals with the aspect of calculation and also the area which was actually acquired.

10. According to him, there is no error apparent on the face of record. His further contentions are, the applicant has never co-operated with the Executing Court in disposal of the execution proceedings and by way of afterthought has raised the issue of the area in the judgment.

11. I have appreciated the submissions.

12. The fact remains that the directions issued by this Court in First Appeal No.270 of 2004 on 21st June, 2007, thereby granting enhanced compensation were not complied with. As such, Darkhast Proceedings were required to be taken out.

13. The fact remains that the applicant, just because it is Union of India will not get leverage not to co-operate and assist the Executing Court in disposal of the execution proceedings, particularly, when already the right of the respondent for grant of enhanced compensation was already adjudicated.

14. The case which is sought to be put forth was never put before the Executing Court in spite of there being opportunities were given to the petitioner.

15. In this background, it cannot be said that this court has committed an error in accepting the calculation tendered by the respondent in the execution proceedings. If the contentions of the

petitioner are appreciated, the same virtually amounts to exercising the powers of appeal in review proceedings as the applicant wants this Court to reappraise the calculation which it has placed at belated stage on the record of this Court.

16. In this background, what can be noticed that in the claim put forth there is an error on the face of the record cannot be inferred. As such, the present review application sans merit.

17. The Review Petition as such stands dismissed with cost of Rs.10,000/- to be deposited before the Executing Court to which the decree-holder shall be entitled to withdraw.

18. In view of disposal of the petition, interim application therein does not survive and same accordingly stands disposed of.

[NITIN W. SAMBRE, J.]