

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6368 OF 2022

PANDIT NAMDEO ZAREKAR DIED THROUGH LRS KUNJLATA
PANDIT ZAREKAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND
OTHERS

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Mr. Pratibha J. Bharad, Advocate for the Petitioners.
Mr. S.N. Morampalle, AGP for the Respondent-State.

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CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 12, 2023.

PER COURT :

1. By this petition, the Petitioners are challenging the order dated 17.02.2022, passed by the Reference Court i.e. Joint Civil Judge, Senior Division, Jalna in Misc. Civil Application No. 34 of 2019 filed by the Petitioners, rejecting application filed by Petitioner for correcting the area acquired under Award dated 31.12.2005 and for calculation of the appropriate compensation accordingly. The Reference Court by the impugned order rejected the application on the ground that the Award in the reference has been passed by application of “judicial mind” and by reasoning and finding and the same cannot be corrected in an application under section 151 of the Code of Civil Procedure, 1908 (for short, “the Code”).

2. Heard learned counsel appearing for the Petitioners. Learned counsel for the Petitioner invited the attention of this Court to the Award dated 31.12.2005, which mentions the acquired area of Gut No.37 as 2 H 05 R. She would further invite the attention of this Court to the application under Section 18 of the Land Acquisition Act, 1894, which states the area of Gut no.37 as 2 H 05 R. She would further submit that it is the only typographical error and same can be corrected under the provisions of Section 151 of the Code.

3. Learned AGP has not disputed the fact that the area acquired was 2 H 05 R of Gut No.37, and as such, the compensation to be determined by the reference Court was in respect of 2 H 05 R.

4. By the impugned order dated 17.02.2022, the Reference Court has declined to correct the area and calculate the compensation as per the corrected area as 2 H 05 R, on the ground that detailed award has been passed. In my view, the Reference Court has failed to take into consideration the fact that there is no dispute about the area acquired i.e. 2 H 05 R and therefore, the claim for enhanced compensation under Section 18 of the Land Acquisition Act, 1894 was in respect of the said area of 2 H 05 R. It is clear from the Award dated 29.10.2018 that instead of acquired area 2 H 05 R an area of 1 H 45 R has been taken for the purpose of calculation of enhanced compensation and as such, it is an error apparent on the face of record and ought to be corrected.

5. Considering the above, the impugned order dated 17.02.2022 is quashed and set aside. The Reference Court is directed to correct the area acquired in respect of Gut No.37 in accordance with the Award dated 31.12.2005 i.e. 2 H 05 R and calculate the compensation accordingly.

6. The Writ Petition is allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)