

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

19 WRIT PETITION NO.11354 OF 2022

**RAMESH PARBHAT KHANDALKAR
VERSUS
THE STATE OF MAHARASHTRA
THROUGH THE SUB DIVISIONAL OFFICER AND ANOTHER**

...
Advocate for Petitioner : Mr. Dnyaneshwar A Bide
AGP for Respondent - State : Mr. S.N. Morampalle

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 20-02-2023

PER COURT :

. Heard.

2. Challenge in the petition is to the order dated 10.08.2022 passed below Exh.13 in L.A.R. No.102 of 2016 rejecting the petitioner's application for amendment in the land reference proceedings.

3. In the reference proceeding under Section 18 of the Land Acquisition Act the petitioner claimed enhanced compensation in respect of his land bearing Gat No.249 and 251 total admeasuring 0-Hec. 51-Are. At the time of filing the claim, the amount demanded for the suit land 19-Are in Gat No.249 was Rs.2,52,700/- at the rate of Rs.13,300/- per Are and the enhanced amount to be claimed / paid was Rs.2,50,320/- at the rate of Rs.13,174/- and as far as the

suit land admeasuring 0.32 Are in Gat No.251, the amount demanded was Rs.3,19,200/- at the rate of Rs.9,975/- and enhanced amount claimed was Rs.2,94,400/- at the rate of Rs.9,200/-. By an application filed under Order-VI, Rule-17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'), the claimant / petitioner sought amendment in the calculation table to change the amount demanded as far as Gat No.249 is concerned, to Rs.3,23,000/- at the rate of Rs.17,000/- and in the column of the enhanced compensation to change the figure to Rs.3,20,620/- at the rate of Rs.16,875/- and in respect of Gat No.251 in the column of demanded compensation to change the figure to Rs.5,44,000/- at the rate of Rs.17,000/- and in the column of enhanced compensation to change the figure Rs.5,19,200/- at the rate of Rs.16,225/- and subsequently to change the total figure of compensation.

4. Heard the learned counsel appearing for the parties.

5. The learned counsel appearing for the petitioner submits that the application came to be filed demanding the change in the enhanced compensation as the petitioner became aware of the sale-deeds of the adjacent lands which reflected the enhanced valuation. He further submits that there is no bar to seek amendment in the reference proceedings and in support he relies upon the Full

Bench decision of this Court in the case of **The State of Maharashtra and Others vs. Sitaram Narayan Patil (Since deceased through his LRs Shri Pralhad Sitaram Patil and Others) an Others etc., (2010) 2 ALLMR 508.**

6. Per contra, the learned AGP submits that in the application seeking amendment it is clearly stated that earlier the petitioner was not in position to pay the required court fees and as such the amendment is sought as now he is in position to pay the court fees. He further submits that the amendment would change the nature of the claim.

7. Considered the submissions of the parties. The reference pending before the reference Court is under Section 18 of the Land Acquisition Act, Section 18 of the Land Acquisition Act reads thus:

“18. Reference to Court.- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) if the person making it was present or represented before the Collector at the time when he made his

award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.”

8. It is clear from perusal of the Sec.18 of the Land Acquisition Act that the matter is referred by the Collector for determination of the Court as regards the amount of compensation. As such, the proceedings are for the purpose of determination of the enhanced compensation. The Full Bench of this Court in the case of **Sitaram Narayan Patil** (*supra*) has held that the claimant whose land is acquired can be allowed to amend his claim application so as to enhance the compensation in an application for reference under Section 18 of the Act, however while granting amendment so as to enhance the compensation, the general principles for considering an application for amendment made under Order-VI, Rule-17 of the Code of Civil Procedure, 1908 are applicable. In the present case, application for amendment has been rejected on the ground that there is huge difference in respect of the enhanced amount claimed for two gut numbers and that the amendment would change the nature of the proceedings. While considering the application for amendment, it is trite that the merits of the amendment are not required to be gone into. The burden, in land acquisition reference,

is upon the claimants to prove the, entitlement to enhanced amount of compensation and as such during the trial the issue as regards proof of enhanced compensation will be considered. Considering that the reference is for the purpose of claiming the enhanced compensation it is unclear as to how change in the rate of the compensation demanded would amount to change in the nature of the proceeding.

9. In light of the above, the impugned order dated 10.08.2022 rejecting the petitioner's application for amendment is unsustainable and is liable to be quashed and set aside and is accordingly quashed and set aside.

10. Writ Petition stands allowed.

(SHARMILA U. DESHMUKH, J.)

GGP