

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.702 OF 2022

Babu S/oVithoba Khengare

.... Petitioner

Versus

1. The State of Maharashtra
Through Collecotr Beed

2. Union of India
Through General Manager
Central Railway, CST,
Administration Building
Mumbai – 400 001.

3. The Deputy Chief Engineer (Construction)
Central Railway, Sangamwadi,
Pune, Dist. Pune – 411 001.

.... Respondents

.....

Mr. Sushant B. Choudhari, Advocate for the Petitioner
Mr. P.N. Kutti, AGP for Respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 03rd JULY, 2023

ORDER :

1. This petition, filed under Article 227 of the Constitution of India, takes exception to the order passed by the learned Civil Judge, Senior Division, Beed, below Exhibit-1 in Misc. Civil Application No.1305 of 2021, thereby rejecting the prayer of the petitioner seeking correction of his age and name in the judgment and award passed in Land Acquisition Reference No.831 of 2014.

2. Petitioner along with other claimants filed Land Acquisition Reference No.831 of 2014, seeking enhanced compensation. In the cause title of the Reference, the name of petitioner appears as claimant at Sr. No.12 as 'Balu Vithoba Khengare'. By common judgment, eight References were allowed including the Reference of the petitioner and enhanced compensation was awarded by the Reference Court by judgment and award dated 19/10/2019.

3. The petitioner, thereafter, filed Misc. Civil Application No.1305 of 2021 in Land Acquisition Reference No.831 of 2014 under Sections 151, 152 and 153 read with Order VI Rule 17 of the Code of Civil Procedure, seeking correction in the name and age of the petitioner in the Reference Petition and in the judgment and award of Land Acquisition Reference No.831 of 2014, contending that due to oversight and typing mistake, name of the applicant is wrongly mentioned as 'Balu' and his age is wrongly mentioned as '38 years'. In fact, the correct name of the petitioner is 'Babu', and his age is '74 years'. The respondents did not object to the said application.

4. The reference Court has rejected the said application, holding that once the case is decided, the Court becomes *functus officio*. Hence, the prayer of the amendment in the

said application is not tenable, and therefore, the application filed by the petitioner is meritless.

5. Heard the learned advocate for the petitioner and the learned Assistant Government Pleader for Respondent No.1. Perused the writ petition memo, annexures thereto, Record and Proceedings, and the impugned order.

6. Following provisions are required to be taken into consideration while deciding this matter.

"151. Saving of inherent powers of Court - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.

152. Amendment of judgment, decrees or orders - Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

153. General power to amend -The Court may, at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."

7. In *Madhav S/o Tukaram Kulal and another Vs. Kisan S/o Ayaji Bodakhe and another, 2007(3) All MR 49*, learned Single Judge of this Court held that if there is mistake in judgment and decree, which is typographical, and if the parties are aware about the same, a litigant cannot be deprived of the fruits of the decree for accidental slips and omissions.

8. The Reference Court has misread and misconstrued the provisions of Section 151, 152 and 153 of the Code of Civil Procedure, and has failed to apply its mind to the contentions raised by the petitioner in proper perspective. Since, the Reference Court has failed to exercise jurisdiction vested in it, the impugned order is unsustainable, and the same is hereby quashed and set aside.

9. The matter is remitted back to the Reference Court. The Reference Court shall decide Misc. Civil Application No.1305 of 2021 on its own merits within a period of two weeks from the date of receipt of writ of this order.

10. Record and Proceedings be sent back to the Reference Court.

[NITIN B. SURYAWANSHI]
JUDGE