

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

50 WRIT PETITION NO.2221 OF 2020

**TRIMBAK NARHARRAO DESHPANDE
VERSUS**

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Anant R. Devakate
AGP for Respondent – State : Mrs. G.L. Deshpande

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 14-02-2023

PER COURT :

. Heard.

2. By this petition, the challenge is to the order dated 25.06.2019 passed below Exh.1 in Day Petition No. 11 of 2018. The land bearing Survey No. 124/1/A admeasuring 87-R was acquired by the respondents along with other areas and the Award was passed on 17.08.1995. Upon receipt of the notice under Section 12 (2) of the Land Acquisition Act, the petitioner herein filed reference which came to be decided by common judgment dated 21.09.2006. In the said LAR proceedings, the award which was passed under Section 26 of the Land Acquisition Act mentions the area of Survey No.124/1A to the extent of 54-R.

3. The learned counsel appearing for the petitioner submits

that it is clear from the statement annexed to the award of the Collector that the area of 87-R was acquired out of Survey No. 124/1/A. He further submits that the amount was not paid in respect of the balance 33-R in view of the fact that in the revenue records the area to the extent of 54-R was recorded. He further submits that after the award was passed by the reference Court and first appeal was filed before this Court in which the cross-objections were also raised by the petitioners which came to be decided by the order dated 22.03.2017 when the claimants were held entitled for compensation at the rate of Rs.11/- per square feet. Subsequently, by Day Petition dated 21.02.2018 an application came to be made to the reference Court to correct the area in the Award as regards Survey No. 124/1/A from 54-R to 87-R, which came to be rejected.

4. The learned counsel for the petitioner submits that it is not disputed by the respondent authority that an area of 87-R has been acquired and as such he is entitled to compensation for acquisition of 87-R.

5. Per contra, learned AGP opposes the petition. She has invited the attention of this Court to communication dated 26.09.1995 in which the petitioner has stated that there is dispute in

respect of the balance area which has now come to be resolved and as such he is entitled to 2 acre and 27 guntha of Survey No. 124/1/A. She further submits that there were no documents which were filed along with the said communication and as such without proper detailed application being filed, the dispute cannot be decided by the Collector. She further submits that the admission in the reference proceedings was as regards the acquisition of the area of 87-R and not in respect of the entitlement of the petitioner to the extent of 87-R.

6. Considered the rival submissions of the parties.

7. It is an admitted position that when the award was passed in the reference proceeding under Section 18, the area in respect of Survey No. 124/1/A is recorded as 54-R. The application which has been preferred by the petitioner for correcting the area in the award, has been rejected by the reference court on the ground that as per the e-statement the Land Acquisition Officer has noted that the area in the revenue record is to the extent of 54-R and excess area would be referred under Section 30 of the Land Acquisition Act to the reference Court. It is further observed by the reference Court that considering the note below the e-statement, it appears that there is a dispute in respect of the balance 33-R land and as such the Day

Petition came to be dismissed. In my opinion, no infirmity appears in the order passed by the reference Court. The petitioner by the present application seeks to correct the area in the award. Under the provisions of Section 13-A of the Land Acquisition Act, only a typographical error can be corrected. In the present case, it is not a case of the correction of any typographical error in the award. By a communication dated 26.09.1995, the petitioner claimed that the entire dispute has been resolved and as such the necessary mutation entry in respect of the entire area of the land to the extent of 87 R is in his favour.

8. Considering the above, the remedy for the petitioner was not to file an application for correction of the award by construing it as an error in the area mentioned in the award, but to make the necessary application to the Collector by filing a detailed application and annexing all the relevant documents to show his ownership in respect of excess area.

9. The learned counsel for the petitioner submits that such an application will be filed before the Collector within a period of two weeks from today.

10. Upon such an application being filed, the Collector to decide the claim of the petitioner within a period of four weeks thereafter.

11. Needless to state that if the petitioner is held entitled to the excess area of Survey No.124/1/A, the enhanced amount of compensation, if any, would also be payable to the petitioner in the absence of any objection from any third party.

12. The writ petition stands disposed of in the above terms.

(SHARMILA U. DESHMUKH, J.)

GGP