



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6073 OF 2022

Smt. Narmadabai W/o Bankatlal Rathi (dead)
through her Legatee Rahul S/o Anandkumar
Rathi, aged about 43 years, Occ. Doctor, R/o
Pushpanjali Kapad Kendra Main Road,
Mangrulpir, Dist. Washim

...Petitioner

// VERSUS //

1. The State of Maharashtra, through the
Collector, Washim, Tq. and District Washim
2. The Land Acquisition Officer, No.2 The
Collectorate Building, Washim, Tq. and District
Washim
3. Executive Engineer, PWD Department,
Washim, Tq. and District Washim

... Respondents

Shri S.A.Mohta, Advocate for the petitioner.
Ms. S.N.Thakur, AGP for the respondent nos. 1 to 3.

**CORAM : ANIL S. KILOR, J.
DATED : 3rd JANUARY, 2024.**

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. In this writ petition, the challenge is raised to the Order
Below Exhibit 29 vide order dated 29th August, 2022 passed by the
learned Civil Judge, Senior Division, Mangrulpir in L.A.C. No. 7 of 2013,

thereby rejecting the application for amendment moved by the petitioner, is under challenge.

3. It is the case of the petitioner that after filing the reference the petitioner realized that she has undervalued her claim and therefore to amend the reference and to seek fair compensation, the application was moved for amendment to the reference.

4. The learned trial Court has recorded its findings while rejecting the application which reads thus:

14. After going through the relevant provision of the Civil Procedure Code, I have gone through the record. It seems from the record that, the claimant has filed this reference on 1/4/2008, accordingly my learned predecessor has issued notice to the respondents. Though, the respondent nos. 1 to 3 appeared failed to file their reply. Hence, by passing order below Exh.1 dated 06/12/2019 my learned predecessor has proceeded this reference without reply against respondent Nos. 1 to 3. And by filing this application the petitioner desire to amend the reference petition submitting that, the evidence of the petitioner is yet to be started. The petitioner has to prove to his claim by adducing cogent evidence. The respondents have every opportunity to contest the petition on merit by cross-examining the petitioner and his witnesses. It is further contention of the claimant that, due to proposed amendment no right of respondent will be prejudiced and no nature of the original reference will be changed. On the other hand it is the contention of the respondent that the claimant cannot take the benefit of the change in market price at the time of passing award by the L.A.O. and thereafter. Thus, after going through the record if the nature of the proposed amendment to be carried out by the claimant is minutely considered, I am of the view that, due to proposed amendment, definitely the entire nature of reference petition will be changed and right of the respondent will be prejudice. On the contrary, if the proposed amendment sought by the claimant is rejected, no right of

claimant will be prejudice. In such circumstances, I am of the view that the application filed by the claimant for permission to amend the reference petition is liable to be rejected. Hence, I answer point No.1 in the negative and in the result in point No.2 I pass the following order.

5. The learned trial Court has recorded that, the entire nature of reference will be changed if the amendment is allowed. It is further observed that the rights of the respondents will be prejudiced.

6. However, I do not find that the said observations are sustainable in the eyes of law for the reason that, in a reference the Court has to determine the value of the land as on the date of notification under Section 4 of Land Acquisition Act on the basis of evidence produced on record.

7. In the circumstances, if the petitioner is of the opinion that while filing reference, it was undervalued and petitioner is entitled for more compensation as claimed in the reference, the petitioner has every right to claim such compensation and it can be considered and granted only on establishing the value of the land acquired on the date of the notification. Therefore, such amendment cannot be said to be would cause prejudice to other side.

8. In the light of the above referred observations, I do not find reasons recorded by the learned reference justifiable, while rejecting the application. Accordingly, I pass the following order.

i. The writ petition is allowed;

ii. The Order Below Exhibit 29 vide order dated 29th August, 2022 passed by the learned Civil Judge, Senior Division, Mangrulpur in L.A.C. No. 7 of 2013 is hereby quashed and set aside and consequentially the amendment application Exhibit 29 is allowed.

[ANIL S. KILOR, J.]