



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 28 OF 2018

Sudhakar Sadashiv KokatePetitioner

VERSUS

The State of Maharashtra & anotherRespondents

.....

Mr. Abhijit More and Mr. M. S. Patil, Advocates for the Petitioner.

Mr. S. N. Kendre, AGP for the State.

Mr. G. B. Rajale, Advocate for Respondent No. 2.

WITH

WRIT PETITION NO. 4554 OF 2018

Madhukar Sadashiv KokatePetitioner

VERSUS

The State of Maharashtra & anotherRespondents

.....

Mr. Abhijit More and Mr. M. S. Patil, Advocates for the Petitioner.

Mr. S. N. Kendre, AGP for the State.

Mr. G. B. Rajale, Advocate for Respondent No. 2.

WITH

WRIT PETITION NO. 27 OF 2018

Mahadeo Sadashiv KokatePetitioner

VERSUS

The State of Maharashtra & anotherRespondents

.....

Mr. Abhijit More and Mr. M. S. Patil, Advocates for the Petitioner.

Mr. S. N. Kendre, AGP for the State.

Mr. G. B. Rajale, Advocate for Respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 12th AUGUST, 2025.

PER COURT :

1. These Petitions take exception to the refusal on the part of the Reference Court to correct the error committed in the operative part of the impugned order dated 16.12.2014 passed in LAR No. 312/2011 and other references.

2. The grievance of the Petitioner is that though LAR No. 479/2011 was in respect of Survey No. 47/1 which was owned jointly by Sudhakar, Madhukar and Mahadev, LAR No. 312/2011 was independently filed by Madhukar in respect of Survey No. 47/3 and LAR No. 313/2011 by Mahadev in respect of Survey No. 47/2. It is contended that though by the order dated 16.12.2014, LAR Nos. 312/2011, 313/2011 and 479/2011 are decided, the compensation is granted only in respect of land Survey No. 47/1 and no compensation is granted in respect of lands Survey Nos. 47/2 and 7/3. This, according to him, is an error committed by the Court which ought to have been corrected in exercise of powers under Section 152 of the Code of Civil Procedure. To support his submissions, he placed reliance on judgment of Hon'ble Supreme

Court in case of Ram Kumar and others vs. Union of India and others, **(1991) 2 Supreme Court Cases 247**.

3. Learned counsel for the Respondents supported the impugned order. According to him, such error cannot be corrected in exercise of powers under Section 152 of the Code of Civil Procedure and the only remedy available for the Petitioners is to file appeal.

4. At the outset, it would be necessary to consider the impugned clause No. 2 of the order dated 16.12.2014 passed in LAR No. 312/2011 and others which reads thus :

2. The claimant in L.A.R. No. 312/2011, 313/11 and 479/11 are entitled for enhancement in the amount of compensation at the rate of Rs. 80,000/- (Rs. Eighty thousand only) per acre, along with all statutory benefits, after deducting the compensation amount, already withdrawn by them under protest, in respect of their acquired land Sy. No. 47/1 to the extent of their respective 1/3rd share, out of total area adm. 01H 00 R, situated at village Kumbheja, Tq. Paranda, Dist. Osmanabad.

The correction is sought in above clause by including Survey Nos. 47/2 and 47/3 for entitlement of compensation.

5. The Hon'ble Supreme Court in case of Ram Kumar (supra) has made following observations :-

"5. In our view the High Court was totally wrong and unnecessarily complicated the matter which seems to us, quite simple. It is an admitted position that 18 bighas and 14 biswas of land belonging to the appellants was acquired and the Land Acquisition Collector had given an award @ Rs. 2300 per bigha for block 'A' and Rs. 1200 per bigha for block 'B'. The appellants were not satisfied with the above rate of compensation and they had moved an application for making a reference under Section 18 of the act. In the application it was clearly mentioned that the Collector had awarded a very low rate of compensation to which the claimants were not satisfied. In Ground No. (9) the claimants/petitioners had mentioned that they were claiming compensation for the whole of their land @ Rs. 20,000 per bigha. That apart in the schedule also some khasra Nos. were mentioned specifically but in the end the words used were 'etc. etc.' The Additional District Judge had passed the order on January 15, 1971 and immediately on the next day i.e. January 16, 1971 the appellants had submitted the application under Sections 151-153 CPC for correcting the mistake. The Additional District Judge who was seized of the matter allowed the said application by his order dated February 18, 1975. Thus from a perusal of the application filed under Section 18 of the Act along with the schedule we are fully satisfied that the appellants were claiming an enhancement in the compensation in respect of the entire land acquired and there was no question of asking for a reference for a limited portion of land measuring 34 bighas and 2 biswas only. The High Court unnecessarily went into the question of some statement made by the learned counsel for the appellants before the Additional District Judge and in examining its validity under Order X of the CPC. It was a simple matter to be decided on the basis of factual statements made in the application and we are fully convinced that the appellants had sought a reference for

the entire land acquired and there was no reason whatsoever in leaving out some portion of the land when the grievance of the appellants was for enhancing the compensation which was awarded at a low rate. The appellants were not required to pay any court fees ad valorem on a prayer for enhancement of compensation while moving an application to the Collector for making a reference to the court under Section 18 of the Act. Learned counsel for the Union of India was unable to give any plausible explanation which might have persuaded the appellants to have left a large portion of the land in the application filed under Section 18 of the Act from claiming enhancement in the amount of compensation.

6. In order to appreciate the controversy we would like to refer Sections 18 and 19 of the Act which are reproduced as under :

“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 persons 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.

19. Collector's statement to the Court – (1) In making the reference, the Collector shall state for the information of the court, in writing under his hand,-

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded under Section 11;

(d) if the objection be to the amount of the compensation, grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively."

Under Section 18 of the act the only requirement for the person interested who had not accepted the award was to move a written application to the Collector requiring that the matter be referred for the determination of the court. One of the grounds for not accepting the award was the amount of compensation. Once such application was moved it was the duty of the Collector to make a reference to the court. Under Section 19 of the Act while making the reference the Collector was require to state for the information of the court the particulars as mentioned in clauses (a) to (d) of sub-section (1) of Section 19 of the Act. Thus it was the duty of the Collector to mention not only the situation and extent of land but even particulars of any trees, buildings or standing crops thereon. The agriculturist whose land is acquired may not be fully conversant with the khasra No. or area as entered in the revenue records and the Union of India or the State acquiring such land should not be allowed to take any advantage of such ignorance of the agriculturists. Once an application is moved for making a reference under

Section 18 of the Act it becomes the duty of the Collector to send full information to the court regarding the entire land acquired and it is thereafter the duty of the court to decide the matter in accordance with law.

6. If the case in hand is considered in the light of the observations made by the Hon'ble Supreme Court, then the order passed by the Reference Court dated 16.12.2014 clearly indicates that though LAR No. 312/2011, 313/2011 and 479/2011 were decided together, but the compensation is granted only in respect of land Survey No. 47/1 excluding Survey Nos. 47/2 and 47/3. There is material on record to indicate that lands Survey No. 47/2 and 47/3 were independently acquired and awards were also passed in respect of the said lands. It is thus clear that out of ignorance/by mistake there is no mention in the operative part of the order in respect of payment of compensation for lands Survey Nos. 47/2 and 47/3. This being inadvertent error, ought to have been corrected by the Reference Court. The order of refusal of such correction cannot sustain and hence hereby set aside.

7. As a result of above discussion, Writ Petitions stand allowed in following terms :-

Clause (2) of the operative order dated 16.12.2014 passed in LAR Nos. 312/2011 and others be replaced by following order :-

Claimants in LAR Nos. 312/2011, 313/2011 and 479/2011 are entitled for enhancement in the amount of compensation at the rate of Rs. 80,000/- (Rs. Eighty Thousand only) pr acre, in respect of their acquired land Survey No. 47/1 to the extent of their respective 1/3rd share and Survey Nos. 47/2 and 47/3 for area admeasuring 1 Hector 98 R and 1 Hector 10 R respectively, situated at village Kumbheja, Tq. Paranda, Dist. Osmanabad, along with all statutory benefits, after deducting the compensation amount already withdrawn by them under protest.

(R. M. JOSHI)
Judge