



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 695 OF 2024

- 1) Suresh S/o Lakhichand Jain (Achaliya),
Aged about 68 years, Occ.-Business,
R/o. Harne Niwas, Rallies Plot, Amravati,
Tah. and Dist. Amravati.
- 2) Vijay S/o Lakhichand Jain (Achaliya),
Aged about 65 years, Occ.-Service,
R/o. Harne Niwas, Rallies Plot, Amravati,
Tah. and Dist. Amravati. At present Mumbai,
through his constituted attorney
Suresh Lakhichand Jain (Achaliya),
Aged about 68 years, Occ.-Business,
R/o. Harne Niwas, Rallies Plot, Amravati,
Tah. and Dist. Amravati.

.... **PETITIONERS**

// VERSUS //

- 1) The State of Maharashtra,
Through Collector, Amravati.
- 2) The Special Land Acquisition
Officer, Amravati.
- 3) Union of India,
Railway Ministry, Mumbai.
- 4) Deputy Engineer,
Controller Central Railway,
Ajani, Nagpur.

.... **RESPONDENTS**

Mr. N. B. Kalwaghe, Advocate for Petitioners.
Mr. H. D. Dubey, Assistant Government Pleader for
Respondent Nos.1 and 2.
Mr. S. A. Chaudhari, Advocate for Respondent Nos.3 and 4.

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 20th MARCH, 2025.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith.
2. Heard finally with the consent of the learned counsel appearing for the parties.
3. It is contention of the petitioners that their land was acquired for the construction of Flyover Road over the New Railway line (Amravati-Narkhed). There was an application under Section 18 of the Land Acquisition Act, 1894 for grant of compensation, which was referred to the learned Reference Court and it has been registered as Land Acquisition Case No.35/2010. The written statement was filed by the respondents and issues were framed. The petitioner placed on record his evidence on an affidavit on 04.07.2017 and thereafter, one amendment was permitted by the learned Reference Court. The petitioner herein added para-3(A) in the application claiming compensation for road which was blocked due to some construction of wall. In view of that amendment, he again tendered additional evidence on affidavit on 02.02.2023. On 11.06.2023, a Report of Architect was obtained by the petitioners and noticing the fact that while calculating the said compensation, the area of the balance land had been mentioned and considered as 3,900 sq.mtr. instead of 6,120 sq.mtr., which was remaining land in possession of the petitioners. As per the Architect report, after acquisition an area admeasuring

6120 sq.mtr. whatever balance with the petitioners is rendered useless and has injuriously affected. The applicants produced on record the Valuation Report and learned Reference Court permitted to produced the same on record. In view of this subsequent development, the petitioners filed an application below Exhibit-82 under Order VI Rule 17 read with Sections 151 and 153 of the Civil Procedure Code for grant of permission to amend the claim petition. The reply was filed by the respondents to the said application. The learned Reference Court rejected the said application on 30.09.2023, which is under challenged in the present writ petition.

4. Learned Counsel for the respondents submitted that earlier an amendment application was filed, it was granted. However, at that time the petitioners have not applied in the same amendment application in respect of measurement. More so, in the matter before the learned Reference Court, issues are already framed and evidence on affidavit of the applicant is already placed on record. It is also contended that if the amendment application is allowed, the claim in the application would be barred by limitation.

5. Learned Counsel for the petitioners relied on *Ambya Kalya Mhatre (Dead) through LRs. and others Vs. State of Maharashtra*, reported in *(2011) 9 SCC 325*. In the matter before the Hon'ble Apex Court, similar question is involved wherein the reference Court

applicant filed an amendment application, which was allowed. The learned Reference Court passed an Award. After passing the award both the parties appeared before the High Court. The said appeal came up with hearing before the High Court and High Court held that claim of the appellant for enhanced compensation in regard to the trees and well, made by amending the application for reference under Section 18 of the Land Acquisition Act was barred by limitation prescribed under Section 18 of the Land Acquisition Act. There was two question before the Hon'ble Apex Court. For the purpose of this matter, Question No.1 is relevant therefore, Question No.1 is reproduced here :-

“(i) Whether in a reference made to the Reference Court under Section 18 of the Act, the landowner is barred from amending the amount claimed in the reference application and seeking higher compensation; and even if he could seek amendment, whether such application should be made within the period of limitation mentioned in Section 18 of the Act?”

The Hon'ble Apex Court in para Nos. 22 and 26 held as under :

“22. As the Act does not require the person aggrieved/landowner to specify the amount of compensation sought, when objecting to the amount of compensation and seeking a reference, mentioning of the amount of compensation sought is optional. As there is no obligation to specify the amount in the application for reference, it can be specified in the claim statement filed before the Reference Court. The period of limitation in Section 18 of the Act has nothing to do with specifying the

amount of compensation claimed. It therefore follows that if the reference is in regard to objection to the amount of compensation, the Reference Court can permit any application for amendment of the claim relating to compensation.

26. When the reference is received, the court causes notice specifying the date of hearing for determining the objection of the land owner/person aggrieved (Section 20 of the Act). The Reference Court has to call upon the claimants to file their statement of claim and call upon the Collector to file his objections to the claim statement and then proceed with the matter. Where the application under Section 18 contains the necessary particulars, the Reference Court may treat the application for reference under Section 18 and the Collector's statement under Section 19 of the Act as the pleadings. The landowner is entitled to specify the amounts claimed by him as compensation and the heads of compensation for the first time in such claim statement before the Reference Court. He can also file an application amending the claim. What is not permitted after the expiry of the period of limitation specified in Section 18 of the Act, is changing the nature of objections from one category to another. If the reference had been sought with reference to objection to amount of compensation, the landowner cannot after the period of limitation, seek amendment to change the claim as objection to measurement or objection to apportionment.

6. The learned Counsel for the petitioners also relied on ***Atul Jaykumar Awate Vs. Special Land Acquisition***, reported in ***2019 SCC OnLine Bom 8951***, wherein the petitioner before this Court challenged the order of Reference Court rejecting the application for amendment in the area of land acquired by the respondent and for granting him

compensation in that behalf. This Court in para Nos. 7, 9, 11 and 12 held as under :

“7. The Respondent has rejected the said Application for amendment by its impugned Order dated 24th February, 2016 on the ground that, there was a delay of about 5 years in filing the said Application for amendment.

9. It is thus clear that, there was a delay on the part of the Petitioner in preferring the said amendment Application and not the main Application under Section 28A of the said Act.

11. Thus, it is apparent that, the Petitioner has been deprived of his legitimate right to get bonafide and reasonable compensation for the land owned by him, and acquired by the Respondent. It further appears that, the Respondent without considering the basic fact that, the Application under Section 28A of the said Act was filed by the Petitioner within the period of limitation, proceeded to reject the Application for amendment of the Petitioner by the impugned Order only on the ground of delay.

12. In view of the above, it is apparent that, the Respondent has committed miscarriage of justice by depriving the Petitioner of his legitimate and bonafide right of getting reasonable compensation for his land acquired by it. As noted earlier, it is an admitted fact on record that, the land belonging to the Petitioner bearing Gat No.274 (part) admeasuring 1 Hectare 56 R. has been acquired by the Respondent.”

7. Admittedly, the evidence on affidavit of the petitioner is filed and cross is yet to commence. The amendment application shows that there is a no change in the objection. The most important is that

by allowing the amendment application on the basis of Valuation Report would not cause any prejudice to other side. They have an opportunity to cross examine the petitioners. If any amendment is helpful to the Court in deciding the real controversy between the parties that should be allowed at any stage. Being a beneficial legislation, such amendment need not be rejected specifically when the other side is having opportunity to cross examine the witness. At this stage, the learned Reference Court ought not to have consider merits in the amendment, it can be decided after leading evidence.

8. As such, the impugned order dated 30.09.2023, passed by learned Reference Court below Exhibit-82 in Land Acquisition Case No.35/2010 is hereby quashed and set aside. The amendment application below Exhibit-82 is hereby allowed. Amendment to be carried out within a period of two weeks.

9. Parties to appear before the learned Reference Court on **02.04.2025** as date fixed by the learned Reference Court.

The Writ Petition stands disposed of in the above terms. No order as to costs.

(SMT. M.S. JAWALKAR, J.)