

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

CIVIL APPLICATION NO. 1732 OF 2015
IN
FIRST APPEAL NO.1750 OF 2014

Kiran Shantaram Dahanukar and Ors - applicantsS

VERSUS

The State of Maharashtra & Anr. - RESPONDENTS

Mr. Anand P.Bhandari, Advocate for applicantss;
Mr. A.S.Bajaj, Advovate for Respondent Resp.no.1.

**CORAM : R.M.BORDE &
P.R.BORA,JJ.**

DATE : 5th March,2015.

PER COURT:

1) The applicants are praying for withdrawal of the amount to the tune of Rs.10,90,18,798/-(ten crores, ninety lakhs, eighteen thousand seven hundred and ninety eight) deposited by appellant/CIDCO in this court towards compensation in respect of the acquired land.

2) The land belonging to the applicants to

the extent of 9 hectares and 72 R. came to be acquired for development of CIDCO. The Reference Court awarded land value at the rate of Rs.196/- per sq. meter, treating the land having non-agriculture potential and on considering the fact that the part of the property has already been converted for non-agricultural user.

3) The applicants have placed reliance on the sale instance in respect of a plot admeasuring 271 sq. meters, which was sold for a consideration of Rs.208.77/- per sq. meter on the date of issuance of Section 6 Notification. Sale instances in respect of the small plot, admeasuring 271 sq. meters is compared for arriving at land value of Rs.196/- per sq. meter by the Reference Court and in respect of an area under acquisition to the extent of 9 hectares and 72 R.. If at all, the Reference Court chooses to place reliance on small area/plot, then appropriate deduction towards smallness of area ought to have been considered by the Reference Court. According to us, at least 50% deductions

on the ground of smallness of area, ought to have been allowed by the Reference Court while considering sale instance of small plot of land for determination of land value. The Reference Court has directed 15% of the area while computing compensation for acquired area treating it as having non-agricultural potential. The deduction in area ought to have been at least 30%. Considering these prima facie observations, we are of the opinion that the applicants shall be permitted to withdraw 50% of the amount out of the amount deposited by the acquiring body in this Court. The application is thus allowed in the following terms, -

- (i) The applicants are permitted to withdraw an amount to the extent of Rs.5,50,00,000/- (Rupees five crores and fifty lakhs). Out of the said total amount, the applicants shall be permitted to withdraw an amount of Rs.2,75,00,000 (Rupees two crores and seventy five lakhs) on furnishing an

undertaking to this Court to the effect that in the event of success of the appeal, the applicants shall re-deposit the amount within a period of 12 weeks from such decision;

(ii) So far as the balance amount of Rs.2,75,00,000/- is concerned, the applicants shall be permitted to withdraw the said amount on furnishing a solvent security in the like amount or Bank guarantee of a Nationalized or Scheduled Bank;

(iii) The balance amount shall be invested in a Fixed Deposit Receipt of a Nationalized Bank for a period of three years and the Fixed Deposit Receipt shall be renewed, on completion of said period of three years, for further period until disposal of the appeal.

(iv) At the request of learned counsel appearing for the applicants, the applicant No.1, who is Power of Attorney

holder on behalf of the other applicants, shall be permitted to withdraw the amount, as indicated above.

4) It is clarified that the observations made in the instant order are prima facie impression and it would be open for the respondents to urge to the contrary at final hearing of the appeal.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

bdv/