

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

WRIT PETITION NO. 6773 OF 2014

1. Dattatrya S/o Govardhan Shinde,
Age- 35 years, Occu- Agril.,
2. Kishor S/o Govardhan Shinde,
Age-32 years, Occu-Agril.,
Both R/o Jadhav Jawala,
Tq. Kaij, Dist. Beed. ...PETITIONERS

versus

1. The State of Maharashtra,
Through its Collector,
Beed, Dist. Beed.
2. Godavari Marahtwada Irrigation
Development Corporation,
Aurangabad.
Through its Executive Engineer,
Minor Irrigation Division Ambejogai,
Tq. Ambejogai, Dist. Beed. ...RESPONDENTS

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Mr. H.P. Jadhav, Advocate for Petitioners
Mr. S.K. Tambe, A.G.P. For respondent No. 1
Respondent No. 2 - served

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 5th OCTOBER, 2015

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, with consent.
2. The petitioners are before this court aggrieved by order dated 24-04-2014, on Exhibit-32 in Land Acquisition Reference Darkahst No. 55 of 2002 passed by District Judge- 2, Ambajogai whereunder condition is imposed to submit bank guarantee for withdrawal of

amount under award passed by Reference Court on 01-07-2009.

3. It appears that against common judgment and award dated 01-07-2009 in Land Acquisition Reference No. 64 of 2002 and other companion matters, including Land Acquisition Reference No. 55 of 2002 with which this petition concern, passed by the Reference Court, the respondent - acquiring body has preferred first appeals before this court which are stated to be pending. However, parties are *ad-idem* that there is no stay to the award impugned passed by the Reference Court in the first appeals.

4. Learned counsel for petitioners states that in this position, the condition of submission of bank guarantee for withdrawal of decretal amount is onerous. He places reliance on judgment in the case of *Vilas Sumersing Patil Vs. Special Land Acquisition Officer and another* reported in *[2012(2) Mh.L.J. 314]*, wherein it has been observed that conditional order to withdraw decretal amount under award by Reference Court, after furnishing bank guarantee would not be proper in absence of any stay in appeal against decree passed by Reference Court. He further places reliance on judgment dated 18-01-2014 in *writ petition no. 466 of 2014 (Vishnu S/o Rambhau Mitkari Vs. The State of Maharashtra)* wherein it is considered that in absence of stay for withdrawal of amount, condition of furnishing bank guarantee has been onerous. In the same circumstances, it is further observed that in the catena of decisions it has been observed that such an onerous condition cannot be imposed by the executing court when the appellate court has not granted any stay.

5. In view of the same, the condition only to the extent that "(i) *Decree holder Nos. 1 and 2 shall file bank guarantee to the extent of amount of their share of Rs. 1,44,719/-*", in the impugned order dated 24-04-2014, on Exhibit-32 in Land Acquisition Reference Darkahst No. 55 of 2002 stands set aside.

6. Writ petition, as such, stands allowed in terms of prayer clause (B). Rule is made absolute accordingly. No order as to costs.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK