

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

**7 CIVIL APPLICATION NO. 824 OF 2015
IN FA/1168/2014**

**PRATIBHA NAGNATH MASHALKAR AND OTHERS
VERSUS
MAHARASHTRA INDUSTRIAL DEVELOPMENT
CORPORATION, LATUR AND ANOTHER**

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Advocate for Applicants : Mr. Natu Sharad V.
Mr. GR Ingole, AGP for Respondent/State;
Mr. S B Bhosale, Adv. For resp.No.1.

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

DATE : 30th January, 2015.

PER COURT :

1) Heard learned Counsel for respective parties.

2) The applicant/original claimant has prayed for permission to withdraw amount deposited by the Respondents in this Court.

3) In the matter of State of Maharashtra and others Vs. Digambar Bhimashankar Tandale & others, reported in (1996) 2 SCC 583, it has been observed that it would be an illegality to award compensation on per square meter basis in respect of acquisition of agricultural lands before its

conversion to non agricultural use. The Supreme Court, in the aforesaid judgment, has observed thus:

4. The reference Court has relied upon several sale deeds dated 14.01.1976, Exs.48, 49 and 50 of a small extent of land sold on square feet basis and on that premise the court had determined the compensation. It is settled law that when a large extent of land is acquired, the sales of small pieces of land though genuine, cannot be relied upon as the basis to determine the compensation. Accordingly, they are excluded. Having excluded those documents, there is no other acceptable evidence to determine compensation on the basis of square yard or square meter. Accordingly, it is not capable to determine the compensation on squareyard or square meter basis since the lands are not possessed of potential value as building site as on the date of notification."

4) It would be advantageous to refer to the order passed by this Court in C.A. No.781 of 2011 with C.A.Nos.782, 783, 784, 786, 787, 788, 789, 790, 792, 795 of 2011 & C.A.St.No.18483/2010 in F.A.Nos.1725, 1727, 1716, 1736, 1724, 1734, 1737, 1720, 1723, 1722, 1733 and 1735 of 2010, on 09.02.2011.

"Learned counsel for the acquiring

body – respondent no.2, at the outset, invited our attention to the order dated 21st August, 2009 passed by this Court in a group of civil applications in first appeals (i.e. First Appeal Nos.12368/2009, 12306/2009, 12361/2009, 12376/2009, 12367/2009, 12382/2009, 12385/2009 and 12373/2009) arising from the same notifications under the provisions of Land Acquisition Act, and submitted that similar order may be passed. By order dated 21st August, 2009, this Court allowed the claimants to withdraw 50% of the amount deposited without furnishing any surety and the remaining 50% amount on their furnishing Nationalised Bank / Scheduled Bank guarantee to the satisfaction of the Registrar (Judicial) of this Court and by giving an undertaking that if in the final judgment / order, it is found that the amount withdrawn by the claimants is in excess than the amount to which they are entitled, they would refund the said amount."

5) Admittedly, the lands under acquisition were not converted to non agricultural use. However, the Reference Court has awarded compensation at the rate of Rs.22.50/- ps. per square feet, with deduction of 25% which comes to Rs.17/- per square feet, directing manifold enhancement from Rs.600/- per Are awarded by the Special Land Acquisition Officer. The reasons assigned by the Reference Court for directing such huge amount of enhancement in the compensation are not at all convincing. Considering these aspects of the

matter, we are not inclined to permit the applicant/claimant to withdraw 100% amount, however, we restrict the permission in respect of withdrawal of amount to 50%, as directed by us in similar matters.

6) In the circumstances, we allow the application partly and pass the following order:

. Applicant/claimant is allowed to withdraw 50% amount (i.e. 25% of total compensation awarded by Reference Court) deposited in this Court on 10.09.2014, without furnishing any surety and on condition of furnishing an Undertaking to the effect that in the event of success of appeal, the appellant shall refund such amount within twelve (12) weeks from such decision and the remaining 50% amount (i.e. 25% of total compensation awarded by Reference Court) is allowed to be withdrawn on the applicant/claimant furnishing Bank Guarantee of any Nationalised /Scheduled Bank guarantee for the like amount. The applicant/claimant is further directed to keep the bank guarantee alive till the disposal of appeal and for a further period of six weeks from the date of final judgment/order. It is needless to mention that copy of the bank guarantee/undertaking shall be furnished to the learned advocate appearing for Respondent/MIDC, within a period of two weeks from the date of

drawal of the bank guarantee.

7) With these observations, Civil Application stands disposed of.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

bdv/