

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

**CIVIL APPLICATION NO. 208 OF 2015
IN
FIRST APPEAL NO. 1033 OF 2009**

Khajamiya Bashumiya Pathan
Deceased through LRs & others

.. APPLICANT

VERSUS

Maharashtra Industrial Development
Corporation and others

.. RESPONDENTS

Mr. R.B. Deshmukh, advocate for applicant.

Mrs. V.A. Shinde, AGP for the State.

Mr. Khaire, advocate holding for Mr. S. S. Dande, advocate for respondent no. 1.

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CORAM : R.M. BORDE &

P. R. BORA, JJ.

DATE : 23rd JANUARY, 2015.

PER COURT :

1. This is an application by applicants seeking permission to withdraw 50% of the enhanced amount of compensation deposited by acquiring body in this Court. Applicants were permitted to withdraw amount to the extent of 50% by virtue of order passed by Division Bench of this Court on 29.01.2010 and accordingly, applicants have caused withdrawal of the said amount. Applicant tendered Civil Application No. 15727/2011 requesting the Court to permit withdrawal of balance amount. However, this Court, on consideration of contentions in the application as well as on consideration of judgment passed by reference Court was pleased to reject the prayer made by petitioner by order dated 03.02.2012. There are no change in circumstances brought on record for consideration of fresh application.

2. On perusal of judgment delivered by reference court, it is noticed that the Land Acquisition Officer awarded compensation in respect of acquired land at the rate of Rs.600/- per R whereas reference Court has directed enhancement in the amount of compensation to the extent of Rs. 10,000/- per R. On reading the judgment, it is observed that not a single sale instance in support of enhancement is produced by the claimants on record. The judgment is quite vague and, prima facie, we are of the opinion that reference Court ought not to have granted such a huge amount. In paragraph no. 14 of the judgment, the learned Judge has considered certain sale instances, though post notification, and recorded in the judgment that rate arrived at in said sale instances is between Rs.60,000/- to Rs. 1,01,000/- per acre. The Court considered enhancement granted in LAR No. 81/2001 and fixed the rate of the property at Rs. 10,000/- per R.

3. It would be worthwhile to consider certain observations made by us while disposing of similar applications seeking withdrawal of amount arising out of similar matters. Those are quoted as below :

4. Perusal of the judgment and award passed by the learned Judge of the reference court would reveal that the learned Judge has not relied on any of the comparable sale instances while enhancing compensation. The learned Judge has only by adopting process of conjunctures and surmises and observing that the land for MIDC cannot be acquired in a remote place, and taking into consideration the compensation which is granted in case of some other land for some other village, has come to the conclusion that the rate of Rs. 6000/- per R. would be adequate compensation.

5. Perusal of the entire judgment would reveal that the judgment is based on only conjunctures and surmises without considering any evidence. The learned Judge was at least expected to give some reasons, as to why he has jumped to a conclusion that the compensation from Rs. 255/- per R. was required to be increased to Rs.6000/- per R.

6. This Bench is assigned with the present roster with effect from 20th July 2009. In this period of ten weeks, we have come across dozens of matters decided by the same learned Judge (Shri V. G. Ghodchar). In all the matters, we have found that the learned Judge has enhanced the compensation without giving any valid reasons. The compensation, on occasions, has been enhanced more than 20 times, 30 times than the one granted by the Collector. No doubt, that such a enhanced compensation could have been granted, had there been evidence available in that respect. However, in all the cases, we have found that the learned Judge only on the basis of conjunctures and surmises, has increased the compensation manifold. We find that the learned Judge has not taken into consideration the law laid down by the Apex Court or this court, while deciding the cases before him.

7. The land acquisition cases involve a huge money which come from the pocket of tax payers. Such a litigation cannot be dealt with in a cavalier and casual manner, as has been done by the learned Judge of the reference court.

8. In that view of the matter, we are inclined to grant stay to the award, subject to the condition that the appellant deposits fifty percent amount under the award within a period of eight weeks from today.

9. Hence, we grant interim relief in terms of prayer clause "A" of the Civil Applications, on condition that the appellant deposits fifty percent amount under the respective awards, in this court, within a period of eight weeks from today.

10. Copy of this order be sent to the learned Registrar General of this court and also to the learned Principal District Judge, Latur, (both by fax) with a direction that the Land Acquisition References pending before the said Judge (Shri V. J. Ghodchar)

be withdrawn from the said Judge with immediate effect.

4. In view of above and even on consideration of merits, we are of the prima facie opinion that claimants are not entitled to claim withdrawal. Application is devoid of substance hence stands rejected.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

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