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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.156 OF 2015 WITH
CIVIL APPLICATION N.3277 OF 2013 IN
FIRST APPEAL NO.1145 OF 2013

Shivubai Gangappa Devgonda and Ors. ... Applicants

In the matter between

Shri. Chatrapati Shivaji Shikshan Mandal ... Appellants

Vs.

Shivubai Gangappa Devgonda and Ors. ... Respondents

Mr. Amit B. Borkar, for the Applicant in CA No.156 of 2015 and for Respondent No.1 in CA No.3277 of 2013.

Mr. Shrikrishna R. Ganbavale, for the Applicant in CA No.3277 of 2013 and for Respondent No.1 in CA No.156 of 2015.

**CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.**

DATE : 23rd JUNE, 2015

PC.

. These applications have been preferred by the parties to the First Appeal. In First Appeal, the challenge is to the Judgment and Award dated 11th February, 2013 passed by the learned Civil Judge, Senior Division at Gadhinglaj by which the reference under Section 30 of the Land Acquisition Act, 1894 for apportionment has been decided finally. As per the impugned Judgment and Award, the Appellant in the

First Appeal is held entitled to receive 25% share out of the compensation amount of Rs.89,11,760/-. The Respondent Nos.1A to 1H are held entitled to 75% share.

2. Civil Application No.3277 of 2013 has been preferred by the Appellant for stay of execution and operation of that part of impugned Award by which 75% amount was made payable to Respondent Nos.1A to 1H in Appeal. There is no Appeal or cross-objection filed by the Respondent Nos.1A to 1H in the Appeal. Civil Application No.156 of 2015 has been filed by Respondent Nos.1A to 1H in the Appeal seeking permission to withdraw their 75% share.

3. The learned counsel appearing for the Respondent Nos.1A to 1H in support of Civil Application No.156 of 2015, on instructions, states that Applicants be permitted to withdraw 10% of the total amount payable to them subject to furnishing security to the satisfaction of the Reference Court and for balance amount, they are prepared to furnish Bank Guarantee of any Nationalised Bank.

4. The prayer for withdrawal is opposed by the learned counsel appearing for the Appellant in the First Appeal.

5. If the entire amount payable to Respondent Nos.1A to 1H under the impugned Judgment and Award is secured, there is no

prejudice to the Appellant. As far as the Appellant is concerned, as there is no challenge to the impugned Award by any of the Respondents to the Appeal, it will be open for the Appellant to withdraw 25% share in the compensation amount.

6. Accordingly, the Applications are disposed of by passing the following order :-

ORDER

- (i) It will be open for the Appellant in the First Appeal No.1145 of 2013 to withdraw 25% compensation amount out of the total compensation amount of Rs.89,11,760/-. If the compensation amount has been invested, withdrawal will be allowed only after maturity of the Fixed Deposit. In such event, the Appellant in the Appeal will be entitled to withdrawal of interest on the Fixed Deposit on pro-rata basis;
- (ii) It will be open for the Respondent Nos.1A to 1H in the Appeal to withdraw their 75% share out of the total compensation amount of Rs.89,11,760/- subject to compliance with the following conditions:-
 - (a) Respondent Nos.1A to 1H shall furnish adequate security to the satisfaction of the Reference Court for withdrawal

of 10% amount out of 75% share in the compensation amount. Before accepting security, the Reference Court shall give an opportunity of being heard to the Appellant in the Appeal and;

- (b) The balance amount out of 75% share of Respondent Nos.1A to 1H shall be permitted to be withdrawn by the said Respondents subject to condition of furnishing Bank Guarantee of any Nationalised Bank for the said amount to the satisfaction of the Reference Court. The Bank Guarantee shall not be accepted without giving an opportunity of being heard to the Appellant;
- (iii) It is clarified that if the amount of compensation has been invested, the Respondent Nos.1A to 1H shall be entitled to withdraw interest thereon on pro-rata basis. It is obvious that even for the interest amount, Respondent Nos.1A to 1H will have to furnish security and guarantee on pro-rata basis as directed above;
- (iv) Both the Applications are disposed of on above terms.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)