

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4958 OF 2016
IN
FIRST APPEAL NO. 875 OF 2014

Bhaguji Aba Nikrad and ors.	...	Applicants
Vs.		
The Executive Engineer, Krishna Khore Mahamandal Minor Irrigation Div. No.1. and Anr.	...	Respondents

WITH
CIVIL APPLICATION NO. 5033 OF 2016
IN
FIRST APPEAL NO. 566 OF 2014

Laxmibai Dadaram Mhaske and ors.	...	Applicants
Vs.		
The Executive Engineer, Krishna Khore Mahamandal Minor Irrigation Div. No.1. and Anr.	...	Respondents

Mr. D.R. Jayabhar, Advocate for the Applicants.
Mr. G.B. Rajale, Advocate for respondents no.1 & 2.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 29-07-2016.

Per Court :

1. Learned counsel for the applicants requests for relaxation of condition of furnishing bank guarantee for withdrawal of the land acquisition compensation amount, stating that the applicants are not in a position to procure bank guarantee.

2. The operative part of the order dated 12-12-2014 in Civil Application no. 7237 of 2014 in which modification has been sought reads as under:

3. *For the reasons as have been referred to in aforesaid order, I deem it appropriate to pass in this civil application following order.*

(A) *Applicants are entitled to withdraw 25 per cent of the amount deposited by the Respondent/acquiring body before reference court without furnishing any bank guarantee and/or surety.*

(B) *Remaining seventy five per cent amount is allowed to be withdrawn by the applicants on furnishing bank guarantee of any nationalised bank to the satisfaction of the reference court and on undertaking that the bank guarantee will remain in force till hearing and final disposal of the present appeal.*

3. Learned counsel for the applicants draws attention to that in the matters arising from the same land acquisition proceedings, Hon'ble Single Judge dealing with similar situation has passed an order letting the applicants to withdraw 50% of the amount upon an undertaking to the executing court to the effect, that in the event, the appeal is allowed and the applicants are directed to deposit the amount, they shall deposit the same within a period of one month. Said applicants were further allowed to withdraw 25% of amount deposited on submitting solvent security/surety of the like amount and remaining 25% of the amount deposited was directed to be kept in fixed deposit of any nationalised bank.

4. Learned counsel, in view of aforesaid submits, it would be expedient that, the condition of furnishing bank guarantee for withdrawal of 75% of amount as per order dated 12-12-2014 may

not be insisted upon and instead of furnishing bank guarantee for withdrawal of 75% of the amount, the applicants be allowed to withdraw 75% of the total amount deposited by respondent/acquiring body in the reference court in aggregate, imposing similar conditions as in order dated 23-10-2015 in Civil Application No. 14175 of 2015 in First Appeal No. 768 of 2014.

5. For ready reference the order dated 23-10-2015 in Civil Application No. 14175 of 2015 in First Appeal No. 768 of 2014 is as under:

(i) The applicants are allowed to withdraw 50% of the amount deposited on submitting an undertaking to the executing court that, in the event appeal is allowed and the applicants are directed to deposit the amount, they shall deposit the same within a period of one month. The applicants are further allowed to withdraw 25% of the amount deposited on submitting solvent security / surety of the like amount.

(ii) Remaining 25% of the amount deposited be kept in fixed deposit of any nationalised bank.

6. Learned counsel for the respondents, is not in a position to dispute aforesaid position.

7. In view of above, since it is being stated that, the order of Hon'ble Single Judge is in respect of a matter arising out of same land acquisition proceedings, it would be expedient that, the respondents/applicants now are allowed to withdraw 50% of the amount in aggregate from the compensation deposited (including

25% of amount already withdrawn by them pursuant to clause 'A' under order dated 12-12-2014 in civil application no. 7237 of 2014) on furnishing undertaking by substitution of clause 'A', and also 25% of amount on furnishing solvent security/surety of like amount as per order in Civil Application no. 14175 of 2015.

8. In the circumstances, clause 'A' will stand modified by following clause 'AA' and clause 'B' will not be enforceable and under the modification, it shall be deemed to be deleted and following clauses 'BB' and 'C' be added to order dated 12-12-2014:

AA) The applicants be allowed to withdraw a further amount of 25% deposited by respondent-acquiring body in the executing court. However, the applicants shall now submit an undertaking to the executing court to the effect that, in the event the appeal of respondent-acquiring body is allowed and applicants are directed to deposit the amount, they shall deposit 50% of the amount withdrawn, comprising (a) 25% amount withdrawn pursuant to order dated 12-12-2014 in Civil Application no. 7237 of 2014. (b) 25% being allowed to be withdrawn under this (AA) clause within a period of one month.

BB) The applicants are further allowed to withdraw 25% of the amount deposited on submitting solvent security/surety of the like amount, to the satisfaction of

executing court.

C) The remaining 25% of the amount deposited be kept in Fixed Deposit of any nationalised bank.

9. On filing undertaking referred to under clause (AA) as aforesaid, applicants may be allowed to withdraw 25% of amount. The applicants shall be able to withdraw further 25% of the amount on submitting solvent security/surety of like amount to the satisfaction of executing court. Balance 25% of the award amount be kept in fixed deposit in any nationalised bank.

10. The order dated 12-12-2014 shall now read as under:

(A) Applicants are entitled to withdraw 25 per cent of the amount deposited by the Respondent/acquiring body before reference court without furnishing any bank guarantee and/or surety.

[Aforesaid clause (A) shall be deemed to have been modified as per clause (AA)].

AA) The applicants be allowed to withdraw a further amount of 25% deposited by respondent-acquiring body in the executing court. However, the applicants shall now submit an undertaking to the executing court to the effect that, in the event the appeal of respondent-acquiring body is allowed and applicants are directed to deposit the

amount, they shall deposit 50% of the amount withdrawn, comprising (a) 25% amount withdrawn pursuant to order dated 12-12-2014 in Civil Application no. 7237 of 2014. (b) 25% being allowed to be withdrawn under this (AA) clause within a period of one month.

(B) Remaining seventy five per cent amount is allowed to be withdrawn by the applicants on furnishing bank guarantee of any nationalised bank to the satisfaction of the reference court and on undertaking that the bank guarantee will remain in force till hearing and final disposal of the present appeal.

[In view of modification aforesaid clause (B) is not enforceable].

BB) The applicants are further allowed to withdraw 25% of the amount deposited on submitting solvent security/surety of the like amount, to the satisfaction of executing court.

C) The remaining 25% of the amount deposited be kept in Fixed Deposit of any nationalised bank.

11. Civil applications, accordingly stand disposed of.