

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.4241 OF 2015

IN

FIRST APPEAL NO.1398 OF 2014

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.A.R.Patil, A.G.P. for the State

CORAM : K.K.TATED, J.

DATED : 06/01/2016

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by claimants for permitting them to withdraw sum of Rs.87,03,896/- deposited by the appellant State of Maharashtra as per the judgment and award dated 14.2.2011 passed in L.A.R.No.16 of 1997.
- 3 In the present proceeding, appellant State of Maharashtra filed First Appeal No.1398 of 2014 challenging the judgment and award dated 14.2.2011 passed by Reference Court in L.A.R. No.16 of 1997 awarding enhanced compensation in respect of acquired land to the applicant original claimants. In that First Appeal appellant State of Maharashtra preferred Civil Application No.4105 of 2014 for stay. That Civil Application was disposed of by Division Bench by order dated

10.3.2015 granting stay on condition that appellant State of Maharashtra to deposit entire amount payable in terms of the award in the Reference Court within a period of 12 weeks. The Division Bench further held that if the amount is deposited claimant is permitted to withdraw 75% of the amount on furnishing solvent surety / security to the satisfaction of the Reference Court.

4 The applicant preferred application dated 14.9.2015 below Exhibit-6 in Special Darkhast No.63 of 2014 for permitting them to withdraw the amount deposited by the State of Maharashtra. That application was allowed by the Civil Judge, Senior Division, Panvel by order dated 31.10.2015. Thereafter the applicant claimant preferred application dated 5.1.2015 below Exhibit 13 allowing the applicant to withdraw the amount by furnishing undertaking. That application was rejected by the Reference court by order dated 6.11.2015.

5 The learned counsel for the applicant claimant submits that this court by order dated 10.3.2015 in Civil Application No.4105 of 2015 directed appellant State of Maharashtra to deposit entire awarded amount within a period of 12 weeks. As they failed to deposit the said amount within stipulated time, applicant claimants are entitled to withdraw entire amount without furnishing any

security. On the basis of these submissions, the learned counsel for the applicant submits that this Hon'ble Court be pleased to allow the present Civil Application.

6 On the other hand, the learned A.G.P. for the applicant State of Maharashtra vehemently opposed the present Civil Application. He submits that this court by order dated 10.3.2015 in Civil Application No.4105 of 2014 permitted applicant claimant to withdraw the amount by furnishing solvent security to the satisfaction of the Reference Court. As the applicant failed to provide solvent security to the satisfaction of the Trial Court, Trial Court rightly rejected the applicants application for allowing him to withdraw the amount by furnishing undertaking. He further submits that applicant claimant on their own made a statement in their application dated 14.9.2015 Exhibit 6 that they are ready and willing to comply the order dated 10.3.2015. He further submits that even in that application, they have specifically stated that they are ready to provide bank guarantee for withdrawal of the amount. Hence, nothing survives in the present Civil Application. Same be dismissed.

7 I have heard both the sides at length. It is to be noted that in the present proceeding this court by order dated 10.3.2015 permitted the applicant

claimant to withdraw the amount by furnishing solvent security to the satisfaction of the Trial Court. Though the appellant State of Maharashtra deposited the amount beyond the prescribed period the appellant on their own made application dated 14.9.2015 below Exhibit 6 in the Trial Court stating that they are ready and willing to comply the order dated 10.3.2015. Not only that they also stated in their application that they are ready to provide bank guarantee for withdrawal of the said amount.

8 Considering these facts, I do not find any reason to allow the applicant claimant to withdraw the amount without furnishing any security. Hence, following order is passed:

- a) Civil Application is rejected.
- b) Applicant claimant is permitted to withdraw the amount as per order dated 10.3.2015 in Civil Application No.4105 of 2014 within four weeks from today, failing which Reference Court is directed to invest entire amount in fixed deposit of any nationalised bank initially for a period of one year and same be continued till the hearing and final disposal of First Appeal.
- c) No order as to costs.

(K.K.TATED, J.)