

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.341/2014

(V.I.D.C. through Executive Engineer, Upper Wardha Dam division, Amravati ..vs..
 Ramkisan s/o Asaramji Chanda (dead through Lrs) Jainarayan Ramkisan Chandak)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.

Court's or Judge's orders.

Mr. V. G. Palshikar, Advocate for appellant.
 Mr. M. D. Lakhey, Advocate for respondent no.1.

CORAM : A. B. CHAUDHARI, J.

DATE : FEBRUARY 5, 2016

This matter has come before this Court in view of the motion made by learned counsel for the respondents-claimants for withdrawal of the amount by way of Civil Application No.96/2016.

The learned counsel for the appellant contended that the issue in this case is squarely covered by the Supreme Court decision in the matter of **Abdul Rasak and ors.vs..Kerala Water Authority; 2002 AIR SCW 477**, in which it is categorically held that in the absence of the acquiring body, the award becomes null and void and, therefore, the only way is to send the matter back to the reference Court to decide the same, in accordance with law. The learned counsel for the claimants-respondents, further contended that even in the that event, the respondents cannot be left high and dry and must be paid some amount of compensation since eventually,

the appellant has deposited an amount of Rs.4,74,979/-.

Mr. Palshikar, learned counsel for the appellant, submitted that the amount cannot be allowed to be withdrawn since entitlement of the respondent-claimant will have to be decided again after remand.

However, I find that the respondent-agriculturist cannot left high and dry as contended by Mr. Lakhey, learned counsel for the respondent and, therefore, it would be appropriate to allow withdrawal of a sum of Rs.2,00,000/- only upon furnishing an undertaking on affidavit before the trial Judge after remand.

Hence, following order is passed.

ORDER

(i) First Appeal No. 341/2014 is partly allowed.

(ii) The impugned judgment and order dated 21.10.2011 passed by Civil Judge Senior Division, Wardha in L.A.C.No.127/2004 is set aside. L.A.C.No.127/2004 is sent back to the learned trial Judge for hearing and disposal afresh, in accordance with law.

(iv) The parties shall appear before the reference Court on 07.03.2016. The reference Court shall allow 90 days time to the appellant-VIDC for

filing its written statement. No separate notice shall now be required for service on the appellant-VIDC.

(vii) The reference Court shall, thereafter, proceed for determining the issues and claim on merits by allowing the parties to amend their claim, if so advised and again lead the evidence, if so advised.

(viii) Since the claim petition relates to the year 2004, the trial Judge shall decide the case within a period of one year from today.

(ix) The respondent no.1-Ramkisan Asaramji Chandak is allowed to withdraw an amount of Rs.2,00,000/- on furnishing usual undertaking before the trial Judge. The Registry shall invest the balance amount in the Fixed Deposit and the trial Court shall make an order for its disbursement at the time of judgment.

JUDGE