

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 3283 OF 2016
IN FIRST APPEAL NO.1022 OF 2014

(The State of Maharashtra and others vs. Brijmohan Sajjankumar Mohata and another)

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

Shri A.V. Palshikar, Assistant Government Pleader for the
applicants/appellants.

Shri R.M. Bhangde, Advocate for the respondents.

CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.

DATED : OCTOBER 1, 2016

By this civil application, the applicants State Government, Special Land Acquisition Officer and Executive Engineer, Lower Irrigation Project seek permission to deposit the decretal amount in this Court as the cheque for the decretal amount is with the Office of the Government Pleader. The applicants have also sought stay of the judgment of the Reference Court, dated 18/4/2013 during the pendency of the first appeal.

By this first appeal, the appellants have challenged the judgment of the Reference Court, dated 18/4/2013 partially allowing the reference filed by the respondents and enhancing the compensation to the extent of Rs.63,19,984/- towards the market value of the acquired land, fruit bearing trees and forest trees, excluding the solatium and interest.

Shri Palshikar, the learned Assistant Government Pleader appearing for the applicants, states that this Court had by an order dated 8/12/2014 admitted the first appeal and directed the applicants to deposit the entire decretal amount in this Court within eight weeks. It is stated that on 11/8/2015 an application made by the applicants for extension of the time for depositing the decretal amount came up for consideration and this Court had permitted the applicants to deposit the same within one month or else the stay would stand vacated. It is stated that on 11/3/2016 an application made by the applicants to deposit the amount was granted and stay was continued on the condition of depositing the amount within two weeks. It is stated that on 1/4/2016 the application made by the applicants for depositing the amount within eight weeks was rejected and this Court observed that there would be no stay to the judgment passed by the Reference Court in view of the non compliance of the order to deposit the decretal amount within a time frame.

It is stated on behalf of the applicants that sincere efforts were made by the applicants, as are stated in paragraph 4 of the civil application, to deposit the decretal amount, but the same could not be done till the Government passed the Resolution dated 11/1/2016, thereby sanctioning the amount that is required to be deposited. It is stated that the decretal amount is huge and a sum of Rs.2,75,43,514/- was liable to be deposited by the applicants. It is stated that the decretal amount

could not be deposited within the stipulated period due to the administrative procedure and the non-availability of funds and this Court may permit the applicants to deposit the cheque that is in the possession of the Office of the Government Pleader, in this Court.

It is further stated on behalf of the applicants that in the circumstances of the case and as the compensation granted by the Reference Court for the land and the trees is exorbitant, this Court may not permit the respondents to withdraw the entire amount that may be deposited by the applicants in this Court.

Shri Bhangde, the learned Counsel for the respondents, opposes the prayer made in the civil application. It is stated that execution proceedings are filed by the respondents before the Executing Court and since the stay stands vacated, the applicants may not be permitted to deposit the amount in this Court and the respondents may not be restrained from withdrawing the amount that is liable to be deposited by the applicants. It is stated that the order dated 1/4/2016 is clear and this Court has observed that there would be no stay to the judgment and order passed by the Reference Court as the applicants have not deposited the amount during the extended period. It is stated that even if this Court permits the applicants to deposit the amount in this Court, the respondents cannot be restrained from withdrawing the amount specially when the stay is vacated and when the respondents have not filed an application for withdrawal of the amount. It is stated that the enhanced compensation is only to the extent of

Rs.63 lakhs and odd and the amount of Rs.2 crores and odd is liable to be deposited in view of the additional components of solatium and interest.

On hearing the learned Counsel for the parties and on a perusal of the judgment of the Reference Court, we find that it would be necessary to permit the applicants to deposit the decretal amount of Rs.2,75,43,514/- in this Court as the learned Assistant Government Pleader has stated that the cheque for the aforesaid amount is in the possession of the office of the Government Pleader. In a land acquisition matter, merely because the State Government has not deposited the decretal amount or the amount that is directed to be deposited within a time frame, it would not be proper to permit the claimant to execute the decree and withdraw the entire amount if it is prima facie found on a reading of the judgment of the Reference Court that the compensation awarded to the claimant is on an extremely higher side. If there is some delay in depositing the compensation, the claimants are compensated as interest is payable on the compensation till the date of deposit. Recently, we are coming across several judgments of the Reference Court in land acquisition matters where compensation is granted to the claimants on a mere asking and without cogent evidence to prove that the market value of the land and trees standing thereon is equivalent to the compensation that is granted by the Reference Court. We have also come across several first appeals in land acquisition cases where entire decretal amount is withdrawn by the

claimants and when the matters are heard finally, we find that the claimants are not entitled to the enhancement as sought by the claimants or as granted by the Reference Court and the claimants would be liable to refund almost everything that they had withdrawn. In such cases, it is difficult to recover the amount from the claimants.

We have read the judgment of the Reference Court in this case and in our prima facie view, the grant of compensation for the land and trees is on a higher side and is not supported by evidence. It would, therefore, not be in the interest of justice to permit the respondents to withdraw the entire amount that would be deposited by the applicants in this Court, after-all in the larger interest, the respondents cannot be permitted to withdraw the entire amount of compensation only because the applicants were not able to deposit the decretal amount within the time framed by the Court. Though there is some delay on the part of the applicants in depositing the decretal amount, in our view, that may not hurt the claimants as the interest component would be added to the amount that is sought to be deposited and the interest is on a higher side as compared to the interest rate of the nationalised Banks. In this view of the matter, on a reading of the judgment of the Reference Court, we are inclined to permit the applicants to deposit the decretal amount of Rs.2,75,43,514/- in this Court and we restrain the respondents from withdrawing 40% of the amount that would be deposited by the applicants in this Court. The Registry may permit

the respondents to withdraw 60% of the amount after furnishing solvent surety/security to the satisfaction of the Registrar (Judicial), if they so desire and place 40% of the amount in a fixed deposit Account of any nationalized Bank initially for a period of three years, to be renewed from time to time during the pendency of the first appeal.

The civil application is disposed of in the aforesaid terms.

JUDGE

JUDGE

khj

CERTIFICATE

I certify that this order uploaded is a true
and correct copy of original signed order.

Uploaded by :

Kamal H. Jeswani
Private Secretary

Uploaded on :

5/10/2016