

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1211 OF 2016

Prabhu S/o Madhavrao Solanke and others

Petitioners

Versus

The State of Maharashtra and others

Respondents

Mrs. P.G.Sontakke advocate for the petitioner

Mr. S.S. Tope advocate for Respondent No.

Mr. S.K.Tambe, AGP for State

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 13th July, 2017.)

PER COURT :-

1 The petitioners in this petition are aggrieved by the directions of the learned Civil Judge, Senior Division, Ahmednagar dated 26.11.2013, by which the amounts mentioned in the impugned orders towards compensation to be paid to the petitioners, on account of acquisition of their agricultural lands are permitted to be withdrawn, subject to an undertaking and a bank guaranty in order to facilitate the State to obtain preventive orders from this Court.

2 Since the impugned orders are identical, one amongst such orders is reproduced as under:-

- “ i) The application exhibit 7 is allowed and objection petition at Exhibit 11 is rejected.
- ii) The Assistant Superintendent (Cash & Finance) to pay the amount of Rs.7,97,157 (In words - Seven Lacs Ninety Seven thousand, One Hundred Fifty seven only) to D.H. Through A/c Payee cross cheque, on due identification with undertaking and bank guarantee for the said amount in order to facilitate the State to obtain order of stay; if it intends to do so.
- (Dictated and declared in open Court) ”

3 It is trite law that, when it comes to permitting the farmers and landlords to withdraw the compensation amount in LAR proceedings, a bank guaranty is deprecated and such persons, who have lost their lands to the acquiring body in State projects, are permitted to withdraw the said amount, with a simple undertaking, keeping in view that, the State has preferred an appeal against the order/award. If in appeal, such impugned award is stayed, it would be a different situation all together.

4 Learned counsel for the petitioners relies upon the following judgments in support of her contentions that the impugned orders are perverse and erroneous:-

- a) Deelip vishwanath Patil versus Special Land Acquisition Officer and others (2013(4) Bom. C.R. 598)
- b) Aba s/o Bhiva Jagdale versus The State of Maharashtra

(Writ Petition No.1566 of 2014 decided on 19th March, 2014 by our High Court)

c) Rajaram s/o Kisan Chavan versus The State of Maharashtra (Writ Petition No.3234 of 2011 decided on 21.6.2011 by our High Court)

d) Shaikh Shabbir Mehbookbsab versus The State of Maharashtra and another (Writ Petition No.6313 of 2011 decided on 30.8.2011 of our High Court)

e) Ramlal Ramchandra Choudhari since deceased through LRs Indubai Ramlal Choudhari and others versus The Special Land Acquisition Officer & another (Writ Petition No.4907 of 2009 decided on 9.4.2010 by our High Court).

5 In usual course and in normal circumstances, I would have no hesitation to permit the petitioners to withdraw the amounts under the Award, notwithstanding the pendency of the appeal filed by the State, since this Court has not granted stay to the Award. In fact, by orders of this Court dated 11.7.2011 in Civil Applications and dated 11.7.2011 in the First Appeals preferred by the State, the acquiring body has been directed to deposit the entire amount in this Court.

6 The reason why I am not permitting the petitioners to withdraw the entire amount is on account of the circumstances

narrated by Shri S.S. Tope learned counsel appearing on behalf of the acquiring body which are as under:-

- a) The compensation granted by the Special Land Acquisition Officer (SLAO) was less than Rs.10,000/- per acre.
- b) In the enhancement proceedings, the petitioners have been granted about Rs.80,000/- per acre for dry land and Rs.1,20,000/- per acre for fertile land.

7 Mr. Tope strenuously submits that any enhancement over and above five times of the order of the SLAO is always closely scrutinized and there is every possibility that in the appeal preferred by the acquiring body, the exorbitant rise of about 8 times which is 800% or 120 times which is 1200%, is likely to be reduced to even 50%.

8 Considering the above and since the appeals have been admitted in 2011, it cannot be ruled out that the appeal Court may reduce the compensation if it finds that the enhancement was unusual or peculiar. At the same time, it cannot be ignored that these farmers who have lost their lands, need to get their compensation at the earliest.

9 As such, in the peculiar facts of these case, this petition is

partly allowed on the following conditions:-

- a) Clause 2 or clause 1, as the case may be, in the impugned orders, direction to furnish bank guaranty stands modified and these petitioners - claimants are permitted to withdraw 65% of the amount mentioned in the said clause by furnishing a simple usual undertaking, along with their recent photographs, recent address proof and a copy of the election Commission's voter ID cards.
- b) The remaining amount of 35% may be withdrawn by the petitioners claimants, only if they tender a bank guaranty of either a nationalized or scheduled bank for the said amount, lest, the said amount shall be invested in a nationalized bank, initially for a period of one year and to be renewed on 'year to year basis' till the first appeals are decided.

(RAVINDRA V. GHUGE , J)