

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 2910 OF 2017
IN FAST/33669/2015 WITH CA/15523/2015 IN FAST/33669/2015 WITH
CA/15524/2015 IN FAST/33669/2015

ABHAY KALYANRAO DESHPANDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THR THE COLLECTOR LATUR AND
ORS

...
Advocate for Applicants : Mr. R.P. Adgaonkar
Advocate for Respondents : Mr. S. C. Arora
.....

CORAM : V. K. JADHAV, J.
DATED : 27th MARCH, 2017

PER COURT:-

1. Learned counsel for the applicants submits that notification under Section 4 in respect of acquired land came to be published in the year 2007 and Reference court has awarded compensation at the enhanced rate in the year 2014. During pendency of the reference petition, the original claimant No.3 died and his legal heirs were brought on record in the pending reference petition. Learned counsel submits that even after 11 years of acquisition, the applicants/claimants have not received any compensation.

2. Learned counsel for the acquiring body has strongly resisted the application on the ground that the reference court has not followed the provisions of Evidence Act and shifted the burden on

the respondents to prove by positive evidence that the land referred in the sale instance at Exh. 37 and 38 are of the different quality than the acquired land. Learned counsel submits that it is for the claimants to prove that the land under sale instance are of similar quality compared to the acquired land. The Reference court has enhanced the compensation by awarding exorbitant compensation.

3. Considering the challenge made to the judgment and award passed by the reference court and considering the fact that Section 4 notification in respect of acquired land was published way back in the year 2007, and also that the respondent has deposited only 50% of the amount as awarded by the Reference Court, the applicants are permitted to withdraw the said amount on certain conditions. Thus, the applicants are permitted to withdraw entire amount deposited by the acquiring body in this Court, with accrued interest. Out of the said amount, 50% of the amount on furnishing undertaking and remaining 50% on furnishing solvent surety to the satisfaction of Registrar (Judicial) of this court. So far as applicant No. 3/2 is concerned, the applicant No. 3/1 is permitted to withdraw the amount on behalf of applicant No. 3/2. However, separate cheque of the amount falling to the share of applicant No, 3/2 be issued in her name.

4. Civil application for withdrawal of amount is disposed of.

5. In civil application for condonation of delay, heard both sides. Learned counsel for the applicants submits that due to some administrative difficulties, the appeal could not be preferred within a period of limitation. Learned counsel for respondents/ original claimants has strongly resisted the application on the ground that delay has not been satisfactorily explained.

6. Considering the submissions made on behalf of the applicant acquiring body and for the reasons stated in the application, delay of 507 days caused in filing the first appeal is hereby condoned. Civil application for condonation of delay is allowed and disposed of.

7. In first appeal, issue notice to the respondents, returnable on 12.06.2017.

8. Learned counsel waives notice for respondents/original claimants. Call for record and proceedings.

(V. K. JADHAV, J.)

rlj/