

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 5039 OF 2016
IN FA/565/2014**

**BABU PATILBA GAVADE DECEASED LAHANIBAI AND ORS
VERSUS
THE EXECUTIVE ENGINEER, KRISHNA KHORE MAHAMANDAL MINOR
IRRIGATION DIV. NO.1 AND A**

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Advocate for Applicants : Shri Jayabhar Dattatraya R.
Advocate for Respondent 1 : Shri G.B.Rajale.
AGP for Respondent 2 / State : Ms.S.S.Raut.

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CORAM: SUNIL P. DESHMUKH, J.

DATE :- 05th May, 2017

Per Court:

1 This is an application for modification of the order dated 7th November, 2014 passed by this court in civil application no.7229 of 2014 in first appeal no. 565 of 2014 and companion matters whereunder applicants were allowed to withdraw the amount deposited towards compensation on certain conditions laid down in paragraph no. 2 of said order which are reproduced herein below:

“2. Having regard to the aforesaid, it would be appropriate to pass following order as has been passed in Civil Application No. 7234 of 2014 in First Appeal Stamp No. 30132 of 2013 and connected matters.

(A) Applicants are entitled to withdraw 25% amount deposited by the Respondent/acquiring body before Reference

Court, without furnishing any Bank Guarantee and/or surety.

(B) Remaining 75% amount can be withdrawn by the applicants/original claimants by furnishing Bank guarantee of any Nationalised Bank to the satisfaction of the Reference Court, on undertaking that the Bank Guarantee will remain in force, till hearing and final disposal of these First Appeals.

(C) Civil Applications are disposed of accordingly”.

2 Learned counsel submits that the applicants' lands have been acquired long back and they have been deprived of income from the same since taking over possession under acquisition. The applicants are not in a position to muster amounts in order to enable them to give bank guarantee as directed under clause (B) of the order dated 7th November, 2014.

3 Learned counsel further submits that all the applicants have been absolutely dependent upon agricultural income and due to drought situation prevailing, their economic position has weakened further. In the circumstances, they are not in a position to bear burden of condition of bank guarantee.

4 Learned counsel further adverts to that in respect of acquisition proceedings of lands of nearby villages under the same notification, the matters have been before the Hon'ble Single Judge of this

court. The Hon'ble court has passed order dated 23rd October, 2015 in civil application no. 14175 of 2015 in first appeal no. 768 of 2014, which is at page 11 of present civil application. Paragraph no. 2 of said order reads as follows:

“ 2. Considering the award passed, I pass the following order.

ORDER

(i) The applicants are allowed to withdraw 50% of the amount deposited on submitting an undertaking to the executing Court that, in the event appeal is allowed and the applicants are directed to deposit the amount, they shall deposit the same within a period of one month. The applicants are further allowed to withdraw 25% of the amount deposited on submitting solvent security/surety of the like amount.

(ii) Remaining 25% of the amount deposited be kept in fixed deposit of any nationalized bank.

The Civil Applications stand disposed of. No costs “.

5 Learned counsel, as such, requests to modify order dated 7th November, 2014, and bring the same in tune with aforesaid order and similar treatment be given to the applicants as in civil application no. 14175 of 2015 in first appeal no. 768 of 2014.

6 Learned counsel for respondents find it difficult to accede to the request for modification of order and submit that the order has been passed in November, 2014, whereas, request for modification of the same is being made in 2016. However, they are not in a position to dispute

veracity of the contentions of the applicants' about their lands being acquired long back, drought situation and income of applicants from agricultural farming being very less and further that in respect of acquisition of lands from nearby villages, compensation has been allowed to be withdrawn by applicants in other matters as referred to in paragraph no. 2 of order 23rd October, 2015.

7 In the circumstances, it appears to be expedient that the order dated 7th November, 2014, be modified and to bring the same in tune with order dated 23rd October, 2015.

8 **(a)** Applicants, as such, are allowed to withdraw further 25% of the amount deposited in addition to 25% amount already withdrawn pursuant to clause (A) of order dated 7th November, 2014 in civil application no.7229 of 2014, on submitting an undertaking to the executing court that, in the event appeal is allowed and the applicants are directed to deposit the amount, they shall deposit 50% amount withdrawn as aforesaid within a period of one month.

(b) The applicants are further allowed to withdraw 25% of the amount deposited, on submitting solvent security/surety of the like amount.

(c) Remaining 25% of the amount deposited be kept in fixed

deposit of any nationalized bank.

9 As such, condition referred to in clause (B) under order dated 7th November, 2014 passed in civil application no.7229 of 2014 in first appeal no.565 of 2014, shall be rendered redundant and shall not be insisted upon.

10 In view of modification as aforesaid in order dated 7th November, 2014, present civil application stands disposed of.

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(SUNIL P. DESHMUKH, J.)