

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) CA NO.5030 of 2016gr

**908 CIVIL APPLICATION NO. 5030 OF 2016
IN
FA/871/2014**

KACHARU MARUTI SATHE
VERSUS
THE EXECUTIVE ENGINEER, KRISHNA KHORE MAHAMANDAL
MINOR IRRIGATION DIV. NO.1 AND A

...
Advocate for Applicant : Mr.Jayabhar Dattatraya R.
AGP for Respondent State: Mr. S.N.Ganachari
Mr.G B Rajale, Adv., for respondent no.1.

...
**909 CIVIL APPLICATION NO. 5036 OF 2016
IN FA/496/2014**

KACHARU MALHARI PAWAR DECEASED LRS VITHABAI AND ORS
VERSUS
THE EXECUTIVE ENGINEER, KRISHNA KHORE MAHAMANDAL
MINOR IRRIGATION DIV. NO.1 AND A

...
Advocate for Applicants : Mr. Jayabhar Dattatraya R.
AGP for Respondent State: Mr. R.B.Bagul
Mr.G B Rajale, Adv. for R/1.

...
**910 CIVIL APPLICATION NO. 5037 OF 2016
IN FA/865/2014**

RAOSAHEB BHAU GAVADE
VERSUS
THE EXECUTIVE ENGINEER, KRISHNA KHORE MAHAMANDAL
MINOR IRRIGATION DIV. NO.1 AND A

...
Advocate for Applicant : Mr.Jayabhar Dattatraya R.
AGP for Respondent State:Mr. S.P.Sonpawale
...

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(2)

CA NO.5030 of 2016gr

**911 CIVIL APPLICATION NO. 6383 OF 2016
IN FA/760/2014**

RAMCHANDRA MARUTI KANGUDE
VERSUS
THE EXECUTIVE ENGINEER, KRISHNA KHORE MAHAMANDAL
MINOR IRRIGATION DIV. NO.1 AND A

...
Advocate for Applicants : Mr. Jayabhar Dattatraya R.
AGP for Respondent State: Mr. C.V.Dharurkar
Mr.G B Rajale, Adv., for respondent no.1.

...
CORAM : P.R. BORA, J.
Dated: June 23, 2017
...

PER COURT :-

1. In the present applications, the applicants are seeking modification of the orders passed by this Court on 19th September, 2014, 29th January, 2015, in respective matters, whereby the applicants were permitted to withdraw 25 per cent of the amount deposited by the acquiring body before the Reference Court without furnishing any Bank guarantee and withdrawal of remaining 75 per cent of the amount by furnishing Bank guarantee of the like amount of any nationalized Bank to the satisfaction of the Reference Court.

2. Shri Jaybhar, learned Counsel appearing for the

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applicants submitted that subsequently in all other similar matters arising out of the same acquisition proceedings, this Court has allowed the applicants to withdraw 50 per cent of the amount on submitting an undertaking, 25 per cent of the deposited amount on submitting solvent surety and balance 25 per cent amount is directed to be deposited in the Fixed Deposit Receipt. Learned Counsel has placed on record the order passed by this Court (Coram: S.V.Gangapurwala, J.) on 23rd October, 2015, in C.A. No.14175/2015 in First Appeal No.768/2014 and the another order passed by this Court (Coram: Sunil P.Deshmukh, J.) on 21st April, 2017, in CA No.4915/2016 in FA No.568/2014, with connected matter.

3. Learned Counsel appearing for the acquiring body has consented for modification of the orders as prayed for by the applicants. Learned A.G.P., however, has opposed for any such modification, stating that the request so made amounts to seeking review of the order and not modification. Learned A.G.P. also submitted that it may not be permissible to modify the order passed in 2014 and 2015, respectively, after about two / three years and instead, the matters can be listed for final disposal.

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4. After considering the submissions advanced by the learned Counsel for the applicants, learned Counsel for the acquiring body and the learned A.G.P., and on perusal of the orders passed by this Court, referred to hereinabove by me, it appears to me that since in earlier matters, this Court has modified the orders and have permitted withdrawal of some more amount without asking for any Bank guarantee, similar treatment needs to be given to the present set of applicants. I am, therefore, inclined to allow the applications and deem it appropriate to pass orders on the similar lines as have been passed by Hon'ble Shri Justice S.V.Gangapurwala and Hon'ble Shri Justice Sunil P.Deshmukh. Hence, the following order:

ORDER

1. (a) Applicants are allowed to withdraw further 25% of the amount deposited in addition to 25% amount already withdrawn on submitting an undertaking to the executing court that, in the event appeal is allowed and the applicants are directed to re-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

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security / surety of the like amount.

(c) Remaining 25% of the amount deposited be kept in fixed deposit of any nationalized Bank for the period till decision of the appeal.

Civil Applications stand disposed of in aforesaid terms.

(P.R. BORA, J.)

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