

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

902 CIVIL APPLICATION NO. 7720 OF 2015
IN FA/1941/2011

ADIL MADARSAB SHAIKH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicants : Mr.Sontakke Gajanan K. and Mrs.P.G.Sontakke
AGP for Respondent Nos.1 & 2 : Mrs.V.N.Patil-Jadhav
Advocate for Respondent No.3 : Mr.D.P.Deshpande
...

**CORAM : R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

DATE: 15th September, 2017

PER COURT :-

1) By this Civil Application, the applicants seek direction against respondents to deposit in this Court balance 50% of the amount of enhanced compensation as granted by Reference Court in L.A.R. No.235 of 2004 and seek permission to withdraw the said amount in tune with the order dated 10th September, 2013 passed by the Supreme Court in S.L.P. No.13264 of 2013.

2) Learned counsel for the applicants invited our attention to the order dated 5th July, 2012 passed by this Court in Civil Application No.1025 of 2012 filed by the applicants in this First Appeal and also the order passed by the Supreme Court on 10th September, 2013. He submits that the applicants had filed the said S.L.P. No.13264 of 2015 against the order dated 5th July, 2012 passed by this Court in Civil Application No.1025 of 2012. The Supreme Court passed the following

order:-

“We direct that the 50% of the enhanced compensation granted to the appellants shall be released without security whereas balance of 50% shall be released to them on furnishing security to the satisfaction of the Collector”

3) Learned counsel for the applicants submits that in view of the order dated 10th September, 2013, passed by the Supreme Court, the order dated 5th July, 2012 passed by the Division Bench in Civil Application No.1025 of 2012 permitting the applicants to withdraw 50% of the amount deposited, stands modified and thus, the acquiring body needs to be directed to deposit remaining 50% of the enhanced compensation and the applicants be permitted to withdraw the same on the terms indicated by the Supreme Court in the order dated 10th September, 2013.

4) Learned counsel for the applicants also invited our attention to the order dated 19th June, 2015 passed by the Division Bench of the this Court in Civil Application No.6643 of 2015 in First Appeal No.2486 of 2010 and would submit that the Division Bench also, by following the order of the Supreme Court, has directed the acquiring body to deposit 50% amount and has permitted the applicants to withdraw the said amount i.e.25% on furnishing bank guarantee and remaining 25% without any surety.

5) Learned counsel appearing for the acquiring body, however, submits that the applicants had not challenged the order dated 5th July, 2012 passed by this Court in Civil Application No.1025 of 2012 refusing to direct the acquiring body to deposit the balance of 50% amount and for seeking permission to withdraw such remaining 50% amount, before the Supreme Court and thus, this Court cannot consider the direction issued by the Supreme Court in the order dated 10th September, 2013, in this matter.

6) The next objection of the learned counsel for the acquiring body is that this Court has already passed an order on 10th June, 2016 directing that all the pending Civil Applications will be considered at the time of final disposal of the First Appeal 1941 of 2011 and thus this Civil Application shall be adjourned for hearing alongwith the First Appeal.

7) A perusal of the order dated 10th September, 2013, passed by the Supreme Court clearly indicates that the said order was passed in several matters including the S.L.P. arising out of Civil Application No.1025 of 2012 in First Appeal No.1941 of 2011 dated 5th July, 2012 / 31st July, 2012. We are thus, not inclined to accept the submission of the learned counsel for the acquiring body that the applicants had not challenged the said order dated 5th July, 2012 before the Supreme Court. Be that as it may, the acquiring body did not apply for any

clarification before the Supreme Court to the effect that the order of withdrawal of 50% of the enhanced compensation without security, whereas balance 50% on furnishing security, was not applicable to the applicants' case.

8) In so far as the submission of the learned counsel for the acquiring body that this Court having already passed an order that all the pending Civil Applications be heard along with First Appeal and thus no order shall be passed by this Court at this stage for the deposit of 50% or granting permission to the applicants to withdraw the said amount is concerned, it is clear that in spite of order dated 10th June, 2016, passed by this Court, the First Appeal No.1941 of 2011 is not heard by this Court till date. In these circumstances, this Court is inclined to pass an order for further deposit of 50% and grant permission to the applicants to withdraw the said amount on the conditions directed by the Supreme Court.

9) Our attention is also invited to the order dated 19th June, 2015 passed by the Division Bench of this Court in another matter directing the acquiring body to deposit further 50% of enhanced compensation and granting permission to the applicants to withdraw the same on certain terms. We have perused the said order dated 19th June, 2015 also while considering this Civil Application.

10) We, therefore, pass the following order:-

ORDER

(I) The respondent No.3 is directed to deposit the balance 50% amount in this Court within 12 weeks from today without fail. Upon such deposit being made by the respondent No.3, the applicants shall be permitted to withdraw 50% of such amount on furnishing solvent security to the satisfaction of the Registrar (Judicial) and remaining 50% of such amount on furnishing undertaking to this Court to the effect that if the applicants fail in the First Appeal, the applicants would return the amount to the respondent No.3 with such interest as this Court may direct.

(II) It is made clear that the learned Registrar (Judicial) of this Court shall accept the solvent security on merits, as may be offered by the applicants, after hearing both the parties.

(III) Civil Application is disposed of on aforesaid terms.

(IV) Place the First Appeal No.1941 of 2011 for hearing and final disposal after aforesaid amount is deposited by respondent No.3 before this Court and after the applicants withdraw the said amount after complying with the terms and conditions as directed aforesaid.

(V) No order as to costs.

(VI) The parties to act on an authenticated copy of this order.

(SUNIL K. KOTWAL, J)

(R.D. DHANUKA, J)