

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

CIVIL APPLICATION NO.9245 OF 2014 IN
FIRST APPEAL NO.1232 OF 2010

Sayyed Mohd. Jahid Husain s/o
Kifayat Husain & another ... APPLICANTS

VERSUS

The State of Maharashtra & another ... RESPONDENTS

.....
Shri Amit S. Deshpande, Advocate for applicants
Shri S.N. Morampalle, A.G.P. for respondent No.1
Shri S.S. Dande, Advocate for respondent No.2
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CORAM: R.D. DHANUKA AND
 SUNIL K. KOTWAL, JJ.

DATED: 18th September, 2017.

ORAL ORDER :

1. By this Civil Application, the applicants seek an order and direction against the acquiring body i.e. respondent No.1 to deposit the remaining 50% amount of the total enhancement awarded by the Reference Court, and seeks liberty to withdraw the remaining 50% amount upon such deposit, if being made by the acquiring body.

2. The Civil Application is vehemently opposed by Mr. Dande, learned counsel for the acquiring body.

3. Learned counsel for the applicants invited our attention to the order dated 3/5/2010, passed by the Division Bench of this Court in Civil Application No.2516/2010 in First Appeal Stamp No.1521/2010 and other companion matters, to which the applicants were also party. This Court directed the original appellant (acquiring body) to deposit 50% of the amount under the award within 12 weeks from the date of the said order as a condition for grant of stay of the order passed by the Reference Court. The applicants herein along with other applicants in group of matters filed separate Civil Application interalia praying for liberty to withdraw the amount deposited by the acquiring body in this Court.

4. By an order dated 22/10/2010 passed by the Division Bench of this Court, all the applicants including the applicants are permitted to withdraw the remaining 50% of the amount deposited by the acquiring body by furnishing solvent security to the satisfaction of the Registrar (Judicial) of this Court and balance amount without furnishing any security subject to the

outcome of the final disposal of the Appeal.

5. Learned counsel for the applicant invited our attention to the order passed by the Supreme Court in Civil Appeal No.13415/2015 filed by one of the applicants forming part of the group, in which, the order dated 22/10/2010 passed by this Court came to be modified. He submits that, the Supreme Court, by consent of parties, passed an order similar to the order passed by the Supreme Court in Civil Appeal Nos.7070-7071 of 2015 on 11/9/2015, thereby directing that the 50% enhanced compensation granted to the appellants shall be released without security, and balance 50% shall be released to them on furnishing solvent security to the satisfaction of the Collector.

6. Relying upon these orders, the learned counsel for the applicants submits that the M.I.D.C., which was a party to the Civil Appeal No.13415/2015 arising out of the said order dated 22/10/2010, filed by one of the appellants whose land was acquired in the same locality which was subject matter of the common judgment delivered by the Reference Court had consented to the said order being passed. He submits that, same order may be passed by this Court, thereby directing the acquiring body to deposit the balance 50% amount of the

enhanced amount in this Court with liberty to the applicants to withdraw half of the said amount upon furnishing a solvent security and remaining amount without furnishing security.

7. Mr. Dande, learned counsel for M.I.D.C., on the other hand, invited our attention to the order dated 5/7/2012, passed by Division Bench of this Court in Civil Application No.14214/2011 in First Appeal No.4176/2008 and other 4 companion matters, refusing to modify the earlier order of Division Bench of this Court in other matter for further deposit of 50% amount and for permitting the applicants therein to withdraw the said amount. He also invited our attention to the order dated 12/7/2013, passed by the Division Bench of this Court in Civil Application No.9624/2012 in First Appeal No.2804/2009 and other companion matters and more particularly various observations made by the Division Bench of this Court in the said order about the merits of those appeals, which orders were passed by the same learned Judge who had passed the impugned order which is the subject matter of these appeals. He also invited our attention to part of the impugned order and would submit that, even in the impugned order, learned Reference Court had passed similar form of order, thereby enhancing the claim disproportionately and without any

evidence. He submits that, in view of the orders passed by this Court on 5/7/2012, 12/7/2013, order dated 27/9/2013 referred to aforesaid, this Court shall not modify the earlier order passed by this Court and shall not direct the M.I.D.C. to deposit further amount in this Court. Learned counsel also invited our attention to the orders passed by the Supreme Court against two of such orders, dismissing the Special Leave Petition and refusing to enhance the amount on deposit of amount and liberty to withdraw the additional amount.

8. Mr. Dande, learned counsel, however, does not dispute that the order dated 16/11/2015, passed by the Supreme Court in Civil Appeal No.13415/2015 was passed in the group of Civil Appeals, out of which one of the appeal was arising out of the common order dated 22/10/2010. He also does not dispute that the said order dated 16/11/2015 was an order by agreement of the parties, similar to the order passed by the Supreme Court in Civil Appeal Nos.7070-7071 of 2015 on 11/9/2015.

9. It is thus clear that the Supreme Court, in one of the Civil Appeal arising out of the order passed by this Court, to which these applicants are parties in respect of the same order of acquisition and same order of Reference Court had directed the

M.I.D.C. to deposit the balance 50% amount and had permitted the applicants to withdraw. We are thus bound to follow the said order dated 16/11/2015 passed by the Supreme Court in Civil Appeal No.13415/2015 which facts are identical to the facts of this case.

10. Insofar as the other issues raised by Mr. Dande, learned counsel for the acquiring body that the Reference Court has enhanced the claim substantially and disproportionately without evidence is concerned, those issues can be considered by this Court at the stage of final hearing of First Appeal. We, therefore, pass the following order :

ORDER

- (I) The respondent No.1 is directed to deposit balance 50% of the amount in this Court within 12 weeks from today, with intimation to the applicants' Advocate. The applicants would be permitted to withdraw the 50% of such amount without any security, however, on furnishing undertaking to this Court to the effect that if the applicants fail in the First Appeal filed by the acquiring body, the applicants would return the said amount with interest as this Court may direct.

- (II) The balance amount shall be allowed to be withdrawn by the applicants on furnishing solvent security/ Bank guarantee of a nationalised Bank to the satisfaction of the Registrar (Judicial). The Registrar (Judicial) shall decide the issue of solvent security after giving an opportunity to both the parties, and shall pass an order. If any such solvent security/ Bank guarantee is furnished by the applicants to the satisfaction of the Registrar (Judicial), the said security/ Bank guarantee shall be kept in force till the disposal of First Appeal No.1232/2010 and for a period of four weeks thereafter.
- (III) Civil Application is disposed of in above terms. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

fmp/