

- 1 -

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

**BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.12068/2017  
IN  
FIRST APPEAL NO.160/2011**

Narharrao @ Narhari Govindrao  
Bhoomkar, died, through L.Rs.  
Suresh Narharrao @ Narhari  
Bhoomkar & others.

...Applicants..

**Versus**

The Vice Chancellor,  
Marathwada Agricultural University,  
Parbhani & another.

...Respondents...

.....

Shri Pradeep Deshmukh, Advocate h/f Shri Y.P.Deshmukh,  
Advocate for applicants.

Shri M.N. Navandar, Advocate for respondent no.1.

Shri Y.G. Gujarathi, AGP for respondent no.2.

.....

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

**DATE: 03.10.2017**

**ORDER :**

- 1] Heard learned counsel appearing for the parties.
- 2] At the request of learned counsel for the applicants, leave to amend the prayer clause in the civil application as prayer clause (AA) is granted so as to

- 2 -

seek an order and direction against the acquiring body to deposit the balance 50% amount in this Court with liberty to apply for withdrawal of the said amount. Amendment be carried out forthwith. Re-verification of the civil application by the applicants is dispensed with.

3] By this civil application, the applicants seek liberty to withdraw the balance 50% amount as may be deposited by the acquiring body on certain terms and conditions set out in the prayers of the civil application.

4] Learned counsel for the applicants invited our attention to the order dated 12.2.2016 passed by the Division Bench of this Court in Civil Application No.1823/2016 in this First Appeal directing the acquiring body to deposit 50% of the awarded amount and granting liberty to the applicants to withdraw 50% of the said amount upon furnishing an undertaking and balance amount upon furnishing bank guarantee. He also invited our attention to various orders passed by this Court including order dated 8.3.2017 in Civil Application No.2397/2017 in First Appeal No.1214/2010; order dated 13.4.2015 passed in the Civil Appeal No.3688/2015 filed

- 3 -

by *Jahidabee Begam Bashir Ahmed & others v. Vice Chancellor, Marathwada Agriculture University, Parbhani & another*; order dated 15.9.2017 passed by Division Bench of this Court in Civil Application No.9602/2016 in First Appeal No.1938/2011 and would submit that in respect of various lands acquired under the same notification, the Supreme Court as well as this Court have directed the acquiring body to deposit 100% of the awarded sum and granted liberty to the applicants to withdraw 50% of the amount without security and balance 50% amount upon furnishing surety / security. He submits that the applicants did not file Special Leave Petition against the order dated 12.2.2016, however, in respect of the land acquired under the same notification and the same location, the acquiring body has been directed to deposit 100% amount and the claimants are allowed to withdraw 100% amount, however, on certain conditions.

5] Mr.Navandar, learned counsel appearing for the acquiring body on the other hand opposes this civil application on the ground that in respect of the land acquired under the same notification, this Court has passed order on 25.8.2015 in Civil Application No.9983/2015

- 4 -

rejecting the application for deposit of the additional amount relying upon an order passed by the Supreme Court. He submits that the applicants have admittedly not filed any Special Leave Petition against the order passed by this Court dated 12.2.2016 and thus the said order does not require any modification.

6] It is submitted by the learned counsel that the acquiring body has no objection if the appeal is expedited and is heard peremptorily.

7] Insofar as the orders passed by this Court on 8.3.2017 in Civil Application No.2397/2017, order passed by the Supreme Court on 13.4.2015 and order passed by the Division Bench of this Court in Civil Application No.9602/2016, which are relied upon by the learned counsel for the applicants in support of the submission that all those matters were arising out of the same notification and the same location and this Court had directed the acquiring body to deposit 100% amount with liberty to the claimants to withdraw the entire amount upon complying with certain terms and conditions is not disputed by the learned counsel for the acquiring body.

8] In our view, even though no Special Leave

- 5 -

Petition was filed by the applicants arising out of the order dated 12.2.2016, the fact remains that in the other group of matters in respect of the land arising out of the same notification in respect of the location, this Court has directed the acquiring body to deposit 100% of the awarded sum with liberty to the claimants to withdraw the entire sums, however, on the condition that 50% shall be withdrawn without furnishing security and the remaining 50% on furnishing security. In our view, the orders passed by this Court relied upon by the learned counsel for the applicants would apply to the facts of this case. We are thus inclined to consider the prayers in the civil application filed by the applicants. We, therefore, pass following order.

9]           The acquiring body is directed to deposit the balance 50% amount in this Court within twelve weeks from today without fail. Upon such deposit by the acquiring body, the applicants would be permitted to withdraw 50% of such additional amount without any security, however, on furnishing an undertaking in favour of the Registrar (Judicial) to the effect that if the applicants fail in the First Appeal, the said amount would be refunded by

- 6 -

the applicants with such rate of interest as this Court may direct. The balance 50% of the additional amount, that would be deposited, shall be permitted to be withdrawn upon the applicants furnishing a solvent surety / security to the satisfaction of the Registrar (Judicial). The learned Registrar (Judicial) shall hear both the parties before deciding the issue of solvent surety / security. If any such surety / security is furnished by the applicants within the time as may be prescribed by the learned Registrar (Judicial), such solvent surety / security shall be kept alive till the disposal of the present First Appeal and for a period of four weeks thereafter.

10] Civil application is disposed of in aforesaid terms. No order as to costs.

11] The parties as well as the learned Registrar (Judicial) shall act upon authenticated copy of this order.

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)