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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.12159/2017
IN
FIRST APPEAL NO.2470/2010

Bhagwan Dattatraya Kulkarni,
died, through L.Rs. Deelip
Bhagwanrao Kulkarni & others.
...Applicants..

Versus

MIDC, Through Regional Officer,
Latur & another.
...Respondents...

Shri S.V. Natu, Advocate for applicants.
Shri S.S. Dande, Advocate for respondent no.1.
Shri B.A. Shinde, 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] By this civil application, the applicants seek an order and direction against the acquiring body to deposit the balance 50% of the compensation awarded by the Reference Court and with liberty to withdraw the said amount or in the alternative permission to submit undertaking to pay 50% of the amount withdrawn instead of bank guarantee and seek direction against the learned Registrar (Judicial) to return the bank guarantee

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submitted by the applicants.

3] Mr.S.V. Natu, learned counsel for the applicants, submits that in identical matters where the Reference Court has awarded compensation at the rate of Rs.38/- per Sq.Ft., which was more than the compensation awarded in this matter, this Court had permitted to withdraw the entire compensation in that matter on the claimants' furnishing security to the satisfaction of the Collector to the extent of 50% and balance 50% without security, whereas in this matter, the amount of compensation is far less than the award of compensation at the rate of Rs.38/- per Sq.Ft. awarded in that matter. He submits that the acquiring body thus be directed to deposit the balance 50% amount with liberty to the applicants to withdraw the said amount or in the alternative to render an undertaking in place of the bank guarantee already furnished by the applicants while withdrawing 50% of the amount deposited by the acquiring body.

4] Mr.S.S. Dande, learned counsel for the acquiring body on the other hand submits that in similar matters, the stay was granted by this Court only upon the acquiring body depositing 50% of the total compensation

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and out of such amount, 25% had been allowed upon furnishing bank guarantee and balance 25% without security. He submits that if this Court comes to the conclusion that furnishing of bank guarantee is cumbersome upon the applicants, the bank guarantee may be permitted to be replaced by solvent surety / security.

5] In our view, since in other identical matters, the Court had directed the acquiring body only to deposit 50% of the awarded sum, we are not inclined to direct the acquiring body to deposit the remaining 50% amount in this Court.

6] Insofar as alternative prayer of the applicants for seeking permission to submit undertaking to repay and such undertaking shall be replaced by the bank guarantee submitted by the applicants is concerned, it is not in dispute that the remaining 50% of the amount deposited is already allowed to be withdrawn in favour of the applicants upon such undertaking. We are thus not inclined to replace the bank guarantee by an undertaking as sought to be canvassed by the learned counsel for the applicants.

7] We are, however, inclined to consider the

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replacement of the bank guarantee to solvent surety / security to the satisfaction of the Registrar (Judicial). The Registrar (Judicial) is accordingly directed to consider the issue of solvent surety / security to the extent of said 50% in respect of which bank guarantee came to be furnished by the applicants after hearing both the parties. If any such solvent surety / security is submitted by the applicants, the said solvent surety / security shall be kept alive till the disposal of the present First Appeal and for a period of four weeks thereafter. Upon furnishing the solvent surety / security to the satisfaction of the Registrar (Judicial), the Registrar (Judicial) shall return the bank guarantee to the applicants for cancellation.

8] The civil application is disposed of in aforesaid terms. No order as to costs.

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

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)