

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

CA/15494/2016 IN FA/4380/2016

**GAUTAM MADHUKARRAO GIRME
VERSUS**

**DY. CHIEF ENGINEER (CONSTRUCTION), CENTRAL
RAILWAY DIVISION, PUNE AND OTHERS.**

...

Advocate for Applicant : Mr S.V.Natu
Advocate for Respondent 1 : Mr M N Navandar
AGP for Respondent State : Mr C V Dharurkar

...

CORAM : V.K. JADHAV, J.

Dated: April 11, 2017

...

PER COURT :-

1. The learned counsel for the applicant-original claimant submits that, this Court by order dated 30.11.2016, on deposit of the amount by the acquiring body, confirmed the interim order granted earlier and further directed to place the matter for final disposal at admission stage and present civil application for withdrawal of the amount directed to be considered alongwith the appeal.

2. Learned counsel for the applicant-original claimant submits that, Reference Court in the present matter has relied upon the earlier judgment of the

reference Court in L.A.R. No.159/2004 and accordingly awarded the compensation at the enhanced rate. Learned counsel submits that, being aggrieved by the judgment and award passed in the said L.A.R. No.159/2004 the acquiring body has preferred F.A. No.90/2011 and the same is pending before the Division Bench of this Court. Learned counsel submits that, unless and until said First Appeal No.90/2011 is disposed of by the Division Bench of this court, present First Appeal cannot be heard and disposed of at the admission stage. Consequently, as per the order passed by this Court dated 30.11.2016 this Civil Application for withdrawal of the amount cannot be considered at the stage of hearing of said appeal at admission stage. The learned counsel for the acquiring body has also not disputed this position.

3. In view of the above position, said pending civil application for withdrawal of the compensation amount is taken up for hearing.

4. Learned counsel for the applicant submits that the

lands owned and possessed by the applicant came to be acquired by the Government. Notification under Section 4 was published on 2.11.1995. Reference court has disposed of the reference petition by judgment and award dated 10.6.2015 and as such, the applicant has not received any compensation for the acquired land at the enhanced rate. It is also a matter of record that in the said first appeal No.90/2011, the present acquiring body has deposited 50% of the amount out of the amount awarded by the Reference Court and the Division Bench of this court has permitted the applicants-original claimants in the said appeal No.90/2011 to withdraw said amount with certain conditions. The learned counsel submits that, by imposing same conditions the applicant herein may also be permitted to withdraw 50% of the amount out of the amount deposited before this Court.

5. Learned counsel appearing for the acquiring body submits that, on the same conditions as imposed by the Division Bench of this Court while permitting withdrawal of the compensation to the extent of 50%,

the applicant herein may be permitted to withdraw 50% of the amount out of the amount deposited before this Court on furnishing Bank Guarantee of a Nationalized Bank to the extent of one crore (1 crore) and remaining amount of Rs.26,39,154/- on furnishing an undertaking to the satisfaction of the Registrar Judicial of this Court.

6. In view of the above submissions, the applicant is permitted to withdraw 50% of the amount on following conditions :-

- i] The applicant is permitted to withdraw rupees one crore (1 crore) out of the amount deposited before this court, on furnishing Bank Guarantee of rupees one crore of a Nationalized Bank to this Court to the satisfaction of the Registrar (Judicial).
- ii] The applicant is also permitted to withdraw Rs.26,39,154/- (Rs. Twenty six lacs thirty nine thousand one hundred and fifty four only) on furnishing an undertaking to this Court that in case the appellant succeeds in the appeal, the amount withdrawn by the applicant without security will be brought back to this Court unconditionally.

iii] Balance amount of Rs.1,26,39,155/- (Rs. One crore twenty six lacs thirty nine thousand one hundred and fifty five) shall be kept in fixed deposit receipt in any Nationalized Bank initially for a period of five years and be renewed thereafter as per the orders of this Court.

7. Civil Application accordingly disposed of.

(V.K. JADHAV, J.)

...

aaa/-