FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.F. NO.1830/2016 IN FIRST APPEAL NO. 1159/2016
(M.I.D.C., AMRAVATI **VERSUS** ASIAN EXPLOSIVE & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri M.M. Agnihotri, counsel for the applicant-appellant.
Shri A.S. Mehadia, counsel for the R-1 to 7.
Shri A.M. Joshi, A.G.P. for the R-8.

CORAM : SMT. VASANTI A NAIK AND V.M. DESHPANDE, JJ.
DATE : JANUARY 11, 2017.

By this civil application, the applicant-Maharashtra Industrial Development Corporation seeks a stay of the judgment and award passed by the reference court on 23.04.2014.

We have heard the learned counsel for the applicant and have perused the impugned award passed by the reference court. The land acquisition officer had granted compensation to the non-applicants-claimants at the rate of Rs.50,000/- per hectare. It appears that the reference court has enhanced the compensation manifold and granted it at the rate of Rs.4,40,000/- per acre. An additional compensation of nearly Rs.3,00,000/- is granted for the fruit bearing trees, compensation to the extent of Rs.2,40,000/- and odd is granted for wells and an amount of Rs.8,63,000/- and odd is granted for the other construction. On carefully reading the judgment of the reference court, we *prima-facie* find that exorbitant compensation is granted in favour of the non-applicants-claimants solely by referring to the awards passed by the reference court in two other land acquisition cases pertaining to the same Section 32(2) notification under the Maharashtra Industrial Development Act, 1961. The awards in the other land acquisition cases, we are told, have not attained finality. Though one of the first appeals filed by the Maharashtra Industrial Development Corporation against the two other awards passed by the reference Court is dismissed, an application for restoration of the matter is filed by the M.I.D.C. and the awards have not attained finality. We *prima-facie* do not find any other cogent evidence on record to support the award passed by the reference court.

In the aforesaid set of facts and in the circumstances of the case, we stay the judgment and award passed by the reference court, subject to the applicant-M.I.D.C. depositing 60% of the amount payable to the non-applicants-claimants in terms of the award, in this Court, within twelve weeks. In the facts and circumstances of the case, we permit the non-applicants-claimants to withdraw 50% of the amount that would be deposited by the applicant in this Court. The balance amount should be placed in the fixed deposit account of a nationalized bank initially for a period of one year and the fixed deposit account should be renewed thereafter from time to time during the pendency of the appeal.

Shri Mehadia, the learned counsel for the non-applicants-claimants, states that this Court may not permit the non-applicants-claimants to withdraw only a part of the amount deposited by the applicant, today. It is stated that the non-applicants-claimants may be permitted to file an application for withdrawal of the amount and only then an order may be passed.

We are not inclined to accept the prayer made on behalf of the non-applicants-claimants. It is conspicuous to note that the counsel, that was previously working out the matter for the applicant-M.I.D.C. had informed the Court that he was not inclined to press the application for stay and since this Court had found that the enhancement granted by the reference court was exorbitant, this Court had recorded the said fact in the order, dated 28.11.2016 and had directed the C.E.O. of the applicant-M.I.D.C. to remain present in this Court on the next date of hearing to explain as to why the applicant-M.I.D.C. was not pressing the application for stay of the award. While directing so, this Court had observed that ultimately the amount, that would be released in favour of the non-applicants-claimants in view of the statement made by the counsel for the applicant that the prayer for stay is not pressed, would not go from the pocket of the officer of the Corporation but, from the public exchequer.

This civil application for grant of stay was called for hearing before this Court, day before yesterday, i.e. on 09.01.2017. At that time, the counsel for the non-applicants-claimants sought some time to prepare the matter. Today, it is not expected of the non-applicants or their counsel to again seek time and ask the court, not to pass an order for withdrawal, unless an application in that regard is filed. When the matter is heard for stay and the judgment is carefully perused by the Court, it is not desirable that the same matter should be heard at two different stages one, for permission to deposit the amount and the other for withdrawal of the amount, thereby compelling the Court to read the judgment of the reference Court on two occasions.

When the time was granted to the non-applicants-claimants day before yesterday for preparing the matter, it was expected of the non-applicants-claimants to address the Court by referring to the evidence on the basis of which the award could be sustained.

Hence, in the circumstances of the case, on a reading of the judgment and award of the reference Court, as already directed hereinabove, we grant stay subject to the applicant depositing 60% of the amount of compensation in this Court within twelve weeks. The non-applicants-claimants are permitted to withdraw 50% of the amount so deposited, if they are interested in withdrawing it, subject to furnishing solvent surety/security to the satisfaction of the Registrar (Judicial). If the respondents do not withdraw the amount, the entire amount deposited by the applicant may be placed in the fixed deposit account as directed hereinabove.

The civil application is allowed in the aforesaid terms and disposed of.

JUDGE **JUDGE**

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