

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 893 OF 2018
IN
FIRST APPEAL NO. 497 OF 2018

Sudhakar Vasudevacharya Jewalikar
and another

.. Applicants

VERSUS

The State of Maharashtra and ors.

.. Respondents

...

Mr. Laxmikant C. Patil, Advocate for applicants

Mr. Shashibhushan P. Deshmukh, Assistant Government Pleader for
respondents no. 1 and 2

Mr. S.G. Sangle, Advocate for respondent no.3

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 13-04-2018

ORDER :

1. Heard learned counsel for applicants and learned counsel for acquiring body.
2. This is an application for withdrawal of the amount deposited in this court pursuant to land acquisition reference court's award.
3. Learned counsel for applicants submits that about 4 Hectare land of the applicants had been acquired for storage tank in the year 1999 and since then, beyond the amount awarded by the special land acquisition officer, no further amount has been paid to them. Learned advocate submits that although reference court

has enhanced the amount, the same is not in tune with the prevailing market price and is also less than the demand made by the claimants. With the acquisition of land, income source of the applicants has been affected. Had the applicants received the land acquisition compensation according to the enhanced rate immediately about the time notification under section 4 of the Land Acquisition Act had been published, may be, possibly, they could have created alternate source of income. They would have been better placed to have an alternate source of income, however, with the passage of time, such an opportunity has been lost. Even with the receipt of enhanced compensation, now, they would not be in a position to create an alternate source of income equivalent or closer to their acquired lands.

4. With the passage of time, their needs have increased. They have grown older and require frequent medical treatment, which is expensive. The applicants are in dire need of amount of the compensation. As such, it is requested that the amount deposited in this court by the appellants / acquiring body be allowed to be withdrawn by the claimants.

5. Learned advocate for the acquiring body submits that there has been exorbitant enhancement under the award of the reference court. Compensation granted by the special land

acquisition officer has been excessively increased by the reference court. Evidence may not bear such stiffer enhancement in the compensation. He, therefore, resists the application.

6. Learned advocate for the acquiring body further refers to a decision of full bench of this court in the case of *State of Maharashtra Vs. Kailash Shiva Rangari* reported in 2016(3) Mh.L.J. 457, pointing out clause (iii) from paragraph No. 32 thereof, whereunder it is held that in case possession of land is taken over not in accordance with provisions of the Land Acquisition Act, 1894 before issuance of notification under section 4, then interest pursuant to section 34 of the Act, is payable from the date of notification and not from the date of possession. As such, according to the learned advocate interest component shall be computed pursuant to full bench judgment referred to *supra* and interest amount as awarded by the reference court would not be payable.

7. In the circumstances, having regard to aforesaid, calculating interest according to full bench judgment (*supra*) and excluding excess interest component from the amount granted by land acquisition reference court, it may be expedient to allow applicants to withdraw 75% amount from the amount deposited in this court on following conditions :-

(i) Applicants may withdraw 25% amount computed as above on furnishing undertaking to this court that the amount so withdrawn would be paid back / re-deposited by them in this court within a period of three months from date of decision in the appeal, if the same goes against the applicants. Undertaking to be filed within a period of three months from today.

(ii) Applicants may withdraw further 25% amount from the computed amount, on furnishing solvent security in the like amount to the satisfaction of Registrar (Judicial) of this Court.

(iii) Further 25% amount from the computed amount is allowed to be withdrawn on furnishing bank guarantee of a nationalized bank in the like amount to the satisfaction of Registrar (Judicial) of this Court.

8. Balance amount along with interest accrued thereon, be invested in a fixed deposit of a nationalized bank earning interest.

9. Civil application accordingly stands disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/