

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

CIVIL APPLICATION NO. 7646 OF 2018
IN
FIRST APPEAL NO. 553 OF 2010

NARAYAN KISAN KENDRE
VERSUS
G.M.I.DC. THROUGH ITS EXECUTIVE ENGINEER, LATUR MEDIUM
PROJECT DIVISION LATUR AND ANOTHER

...
Advocate for applicant : Mr. Mahesh S. Patil
Advocate for respondent No. 1: Mr. S.G. Sangle
AGP for respondent No. 2: Mr. P.G. Borade
...

CORAM : K.K. SONAWANE, J.

DATED : 2nd JULY, 2018.

Order :-

1. Heard learned counsel for the applicant, learned counsel for respondent – Acquiring Body and learned AGP for the respondent -State of Maharashtra. Perused the application and other relevant documents produced on record.
2. It has been submitted that the respondent - Acquiring Body has preferred First Appeal No. 553 of 2010 against impugned judgment and awarded passed by the Reference Court under section 18 of the Land Acquisition Act, 1894 (for short "Act of 1894"). The applicant on earlier occasion moved the civil application No. 3013 of 2010 for withdrawal of the amount deposited in this court on behalf of Acquiring Body. The Division Bench of this Court under order dated 3rd May, 2010 allowed the applicant to withdraw 50% of the amount deposited in the execution proceedings on certain terms and conditions. Accordingly, applicant has withdrawn the amount deposited in the execution proceeding after compliance of procedural formalities. But, later-on the appellant - Acquiring Body deposited remaining 50% of the balance decretal amount in the Executing Court.

3. At this juncture, the applicant is seeking permission to withdraw balance 50% of the amount deposited later on in execution proceeding filed before Reference Court. The learned counsel for the applicant submits that co-ordinate Bench of this Court has allowed the claimants in connected appeals for withdrawal of rest of the 50% balance decretal amount deposited in the Reference Court. Therefore, he requested to apply similar yardstick and allow the applicant for withdrawal of the amount deposited later on in Executing Court.

4. Mr. Sangle, learned counsel for respondent-Acquiring Body has fairly conceded to pass suitable orders in the interest of justice.

5. Admittedly, the appellant - Acquiring body has preferred an appeal against the impugned judgment and award passed by the Reference Court. Pending the appeal, the appellant - Acquiring body deposited 50% amount of the award passed under section 18 of the Act of 1894 by the reference Court. This Court under order dated 3rd May, 2010 allowed the applicants to withdraw amount on certain terms and conditions. The Acquiring Body later on deposited remaining balance amount of the award in Executing Court and now the applicant-claimant moved the present application to allow them to withdraw rest of the 50% amount deposited in the Executing Court.

6. In view of nature of subject-matter and the earlier orders passed in the similar set of facts by this Court in connected civil application No. 5125 of 2018 there is no impediment to allow the applicants for withdrawal of rest of the 50% amount deposited in the Executing Court on certain conditions. Hence, application deserves to be allowed.

7. Accordingly, application is allowed. The applicant is permitted to withdraw 50% of the total compensation amount deposited and remained to be withdrawn by the applicant/claimant subject to condition of furnishing undertaking to the effect that they would refund the amount so withdrawn in case any contingency arises in the appeal and rest of the 50% amount is also allowed to be withdrawn on submitting solvent surety/security of like amount to the satisfaction of

the Superintendent of Executing Court. It is made clear that initially applicant has withdrawn 50% of the compensation deposited in the Executing Court by order dated 3rd May, 2010, rest of the balance 50% amount is allowed to be withdrawn by the applicant by this order. The Superintendent of Executing Court to do needful for disbursement of amount in favour of applicant as mentioned above.

8. Accordingly, civil application stands allowed.

[K. K. SONAWANE]
JUDGE

MTK.