

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

**CIVIL APPLICATION NO. 1955 OF 2018
IN
FIRST APPEAL NO. 4300 OF 2016**

Gayabai Jairam Wagh And Anr. .. Applicants

Versus

The Executive Engineer, Nimn Dudhna Project,
Selu Through GMIDC, Aurangabad and anr. .. Respondents

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Mr. D. A. Bide h/f. Mr. V. B. Wayal, Advocate for applicants
Mr. S. G. Bhalerao, Advocate for respondent No.1
Mr. S. B. Pulkundwar, AGP for respondent No.2 State.

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**WITH CIVIL APPLICATION NO. 1956 OF 2018
IN
FIRST APPEAL NO. 4401 OF 2016**

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CORAM : K.K. SONAWANE, J.

DATED : 13th APRIL, 2018.

Order :-

1. Not on board, taken on board. Heard learned counsel for the parties.
2. These applications are moved for modification of the order dated 04-10-2017 passed by this Court in civil application No. 12432 of 2017 in first appeal No. 4300 of 2016 and another connected civil application. This Court under order dated 04-10-2017 allowed the applicants - original claimants to withdraw 50% of the amount deposited in this court on furnishing undertaking to the satisfaction of Registrar (Judicial) to the effect that, in case, any adverse situation arises after adjudication of appeals on merit, the applicants/original claimants will refund/re-deposit the amount so withdrawn forthwith as per directions of this court. Rest 25% of the amount was allowed to be withdrawn by the applicants-original claimants on furnishing solvent

surety and balance 25% of the amount was directed to be invested in a Nationalized Bank.

3. Learned counsel for the applicants submits that the respective Co-ordinate Bench of this Court in similar set of matters, arising from the acquisition proceeding of the same award and notification as well as from the same village, passed the order and allowed the applicants-therein to withdraw 50% of the amount deposited by acquiring body without any solvent surety/security and rest of 50% amount was allowed to be withdrawn on furnishing undertaking to the effect that, in case, adverse situation arises, after adjudication of the appeals on merit, the amount so withdrawn would be deposited in this court as per order of this Court. The learned counsel submits that in view of rule of parity, similar yardstick be applied in the present matters by modifying the impugned order dated 04-10-2017 accordingly.

4. Learned counsel for the respondent-acquiring body fairly conceded that there are instances in which the claimants are allowed to withdraw 50% of the amount without any security/surety and rest 50% of the amount was allowed to be withdrawn on furnishing undertaking as stated supra. He, therefore, prays to pass suitable orders in the interest of justice.

5. Perused the respective orders passed by the Co-ordinate Bench of this Court and also order dated 15-12-2017 passed by this Court in C.A. No. 12431/2017 in FA no. 4408/2016. Admittedly, in other companion matters, arising from the same notification and award the land owners/claimants-therein were allowed to withdraw 50% of the

amount without any solvent surety/security and rest of 50% amount was allowed to withdraw on furnishing undertaking to the effect that in case adverse situation arise, after adjudication of the appeal on merit, the amount so withdrawn would be deposited forthwith in this court as per order of this Court. It would justifiable to apply similar yardstick to all claimants whose lands were acquired under same notification and award as well as from same neighborhood. If the impugned order is not modified in view of rule of equity, it would cause injustice and prejudice to the claimants. In such circumstances, in view of rule of parity, the order dated 04-10-2017 is modified by substituting following order:

(I) The applications are allowed.

(II) The applicants-original claimants are permitted to withdraw 50% of the compensation amount deposited by the respondent-Acquiring Body without furnishing any surety. The applicants are further permitted to withdraw rest of 50% of the balance amount deposited in this court on furnishing undertaking to the effect that in case adverse situation, if any, arises after adjudication of the appeals on merit, the amount so withdrawn would be refunded/re-deposited forthwith as per order of this court.

(III) Accordingly, Registry to do the needful for disbursement of the amount in favour of the applicants-original claimants as directed above.

6. The Civil applications are disposed of in above terms.

[K.K. SONAWANE]
JUDGE

MTK.