

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

975 CIVIL APPLICATION NO. 3008 OF 2018
IN FAST/322/2018

ASHA VITTHAL KULKARNI
VERSUS
MAHARASHTRA KRISHNA VALLEY DEVELOPMENT CORPORATION,
THR ITS EX. ENGINEER K.I.D.-.

Mr. S.G. Chapalgaonkar, Advocate for Applicant
Mr. S.G. Karlekar, Advocate for respondent No. 1
Mr. A.M. Phule, AGP for Respondent No. 2

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 23rd MARCH, 2018.

Order :-

1. Heard learned counsel for appearing parties.
2. This is an application filed for withdrawal of amount. Learned counsel for applicant submits that the applicant is 73 year old lady. Since acquisition of her land, her source of income having been extinguished, she is living in pitiable economic condition. Her land had been taken possession in 1983 and long thereafter in 1995 notification for acquisition had been issued. Very meagre amount for acquisition of her land in 1999 under award passed by land acquisition officer had been paid. Beyond that amount applicant has not received anything. She has preferred land acquisition reference realizing that price of her acquired land determined by the reference court, is very low. He submits that the reference court had passed award way back in 2014. Yet, thereafter, she has not received any amount.

3. Learned counsel submits that writ petition had to be preferred before high court bearing No. 1422 of 2016, for depositing amount in execution proceedings pursuant to award of reference court. The Court had passed order dated 21-04-2016 in said writ petition. Paragraph No. 6 of order dated 21-04-2016 reads thus:

" 6. Considering the aforesaid aspects of the matter and that the judgment passed by the Reference Court still holds good, we direct the respondent Nos. 1 and 2 to make the payment as per the award passed by the Reference Court expeditiously and preferably within a period of eight (08) months from today. The writ petition is disposed of. No costs."

4. He submits that during said period, no amount had been deposited and applicant had moved the court for contempt of court.

5. Thereafter, appellant - respondent No. 1 in present application had moved this court by way of leave to file appeal along with application for condonation of delay. Respondent no. 1 deposited the amount of compensation in the execution proceedings. He, therefore, submits that having regard to aforesaid submissions, application deserves to be allowed.

6. Mr. Karlekar, learned counsel appearing for acquiring body submits that reference proceeding would depict that acquiring body not been a party to land acquisition proceedings. It may not have appeared in the writ petition, albeit, he hastens to add this is not to justify absence from appearance. He submits that

very high claims are made for compensation and in the proceedings hitherto without appearance of the acquiring body, would not be sustainable. He, therefore, submits that request made under application may not be accepted in its totality and applicants may be put some reasonable conditions.

7. Applicant has been waiting for receipt enhanced compensation for over two decades. Looking at the facts and circumstances, it would be expedient to allow application in terms of prayer clause (B), letting the applicant to withdraw amount deposited in the executing court along with accrued interest thereon, on following conditions:

- i) Applicant is allowed to withdraw 60% of the total deposited amount in executing court along with accrued interest, on condition of furnishing undertaking that claimants shall pay back / re-deposit the amount in this court being withdrawn under this order within a period of three months from the date of decision in appeal, if the decision goes adverse to her interest.
- ii) Further 40% of the total amount with accrued interest, is allowed to be withdrawn by the claimant subject to furnishing solvent security to the satisfaction of the executing court.

8. Civil application is accordingly disposed of.

[SUNIL P. DESHMUKH]
JUDGE