

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

CIVIL APPLICATION NO. 4471 OF 2018
IN FA/3120/2016

SHIVAJI VITTHALRAO BHOITE
VERSUS
THE EXECUTIVE ENGINEER, MEDIUM PROJECT DIVISION, OSMANABAD
THR GMIDC AURANGABAD AND OTHERS

...

WITH

CIVIL APPLICATION NO. 4472 OF 2018 IN FA/3122/2016

PRATAP SHIVAJIRAO BHOITE AND OTHERS
VERSUS
THE EXECUTIVE ENGINEER, MEDIUM PROJECT DIVISION, OSMANABAD
THR GMIDC AURANGABAD AND OTHERS

...

Advocate for Applicants : Mr. Dnyaneshwar A. Bide.
Advocate for Respondent No.1 : Mr. S. G. Bhalerao.
AGP for Respondent No.2 : Ms. S. S. Raut.

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CORAM : K.K. SONAWANE, J.

DATED : 3rd JULY, 2018.

Order :-

1. Heard Mr. Bide, learned counsel for applicants-original claimants and Mr. Bhalerao, learned counsel for respondent – Acquiring Body. Mr. Phule, learned AGP on behalf of respondent State is present. Perused the applications and relevant documents on record.

2. The present applications are moved by the applicants seeking permission to withdraw the decretal amount deposited in this Court on behalf of the Acquiring Body.

3. Mr. Bhalerao, learned counsel for respondent- Acquiring Body raised objection that the Reference Court did not appreciate the evidence on record in its proper perspective and granted exorbitant and excessive compensation amount in favour of claimants. The Acquiring Body has every hope of success in the appeal. Therefore, in order to protect the interest of appellant - Acquiring Body, applications for withdrawal of amount towards compensation may not be allowed.

4. Admittedly, the applicants are original claimants, pursuing the land acquisition proceedings since year 1997. The reference petitions came to be filed under Section 18 of Land Acquisition Act in the year 1997 and Reference Court granted enhancement of compensation in the year 2013. The Reference Court after considering the facts and circumstances on record including the Joint Measurement Survey report carried out by the Government personnel and other relevant record was pleased to allow enhancement of compensation. The existence of the trees under acquisition were shown in the Joint Measurement Survey. The Reference Court has described the same in explicit manner in the impugned Judgment and Award under appeal. In such circumstances, there is no propriety to preclude the claimants from enjoying the fruits of the Award passed by the Reference Court after colossal period since year 1997. Therefore, I find it justifiable to allow the applicants to withdraw at least 75% of the amount of compensation deposited in this Court. It would not cause any injustice or prejudice to the appellant- Acquiring Body. In contrast, it would subserve the purpose. Hence, applications deserve to be allowed partly.

5. Accordingly, applications are partly allowed. The applicants-original claimants are permitted to withdraw 50% of the amount deposited in this court on furnishing undertaking to the effect that the applicants would refund the amount so withdrawn in case of any contingency arises in the appeal. The applicants are further permitted to withdraw 25% of the balance decretal amount deposited in this Court subject to condition that applicants shall furnish solvent surety/security of like amount to the satisfaction of the learned Registrar (Judicial) of this Court. Rest of the 25% amount remained deposited in this Court be invested in any Nationalized Bank for a period of two years or till decision of the present appeal/s, whichever is earlier with liberty to renew the same in future if required. The Registry to do the needful for disbursement of the amount as mentioned above.

6. Accordingly the civil applications stand disposed of in above terms.

[K. K. SONAWANE]
JUDGE

rrd.