

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

WRIT PETITION NO. 5420 OF 2018

**SURYABHAN SEETARAM GARAD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

WITH

WRIT PETITION NO. 5423 OF 2018

**SOMINATH @ SOMNATH ASHRU PANGARE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for the Petitioners : Shri P. R. Nangare
AGP for the sole Respondent : Shri K. S. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 21st AUGUST, 2018.

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PER COURT :

1. These petitioners stand on an identical footing in identical set of facts. They are aggrieved by the impugned orders passed by the executing Court in Special Darkhast No. 8/2011 (Old No. 149/2004) and Regular Darkhast No. 245/2004, by which, they are directed to furnish a bank guarantee for the withdrawal of the amount of Rs. 14,97,281/-

(Rs.Fourteen lakhs Ninety Seven Thousand Two Hundred and Eighty One only) and Rs. 3,28,733/- (Rs. Three Lakhs Twenty Eight Thousand Seven Hundred and Thirty Three only) respectively.

2. I have heard the learned Advocate for the petitioners and the learned AGP on behalf of the sole respondent.

3. This Court has consistently taken a view that unless a stay to the Award of compensation is not granted by this Court in the First Appeal preferred by the State, the executing Court cannot direct furnishing of a bank guarantee by the beneficiaries for withdrawing the amount of compensation. There is no dispute that these petitioners have lost their lands in public projects and the amount sought to be withdrawn are by way of enhanced compensation under Section 18 of the Land Acquisition Act, 1894. It is equally undisputed that though First Appeals have been filed by the respondent in this Court, the award granting enhanced compensation has not been stayed.

4. The following orders passed by this Court have been

cited by the petitioners in support of their contentions :-

(a) Writ Petition No. 2956/2008 decided on 04/06/2008 (Coram : Naresh H. Patil, J.) in the matter of Ananda Kadu Gawali and others Vs. The Special Land Acquisition Officer, Jalgaon.

(b) Writ Petition No. 944/2013 decided on 20/06/2013 (Coram : S. V. Gangapurwala), in the matter of Laxman Jagannath Narote and another Vs. The State of Maharashtra and another.

(c) Pandhari Gangaram Patil Vs. Special Land Acquisition Officer, 2011 (2) Mh.L.J. 579.

5. The learned Advocate for the petitioners submits that both the impugned orders are dated 12/10/2007. Initially these petitioners furnished a bank guarantee and the amounts were not withdrawn. It is submitted that since these petitioners are agriculturists, they lost their lands in public project, are in need of money and since this Court has taken the view in the above stated cases, that these petitions deserve to be allowed.

6. In view of the above, these petitions are partly allowed. The impugned orders dated 12/10/2007 in Special Darkhast No. 149/2004 (Old Number) and Regular Darkhast No. 245/2004 are quashed and set aside.

7. The petitioners in Writ Petition Nos. 5420/2018 and 5423/2018 are permitted to tender a simple undertaking to the executing Court to the extent of withdrawing 50 % of the amount with proportionate accrued interest. The simple undertaking would indicate that if these petitioners suffer any adverse order in the First Appeal, they would return the excess amount, if any, within six weeks from the date of such orders.

8. These petitioners shall furnish a solvent surety to the extent of the remaining 50 % of the amount with proportionate accrued interest, to the satisfaction of the executing Court.

(RAVINDRA V. GHUGE, J.)

shp/-