

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

**CIVIL APPLICATION NO. 5753 of 2018 IN
FIRST APPEAL NO. 1157 of 2007**

Sudhakar Baburao Tanpure

...**APPLICANT**

VERSUS

The State of Maharashtra

...**RESPONDENT**

Mr Vivek V. Tarde, Advocate for applicant.

Mr A.D. Namde, Asstt. Govt. Pleader for respondent/State

CORAM : SUNIL P. DESHMUKH, J.

DATE : 27th April 2018

ORDER :

Heard learned Counsel for the parties.

2. It emerges that First Appeal bearing No. 1157 of 2007 filed by claimant for enhancement in compensation and First Appeal No. 2982 of 2008 preferred by respondent/State against the judgment and award of the Reference Court dated 3rd April 2007 in Land Acquisition Reference No. 165 of 1992 have been disposed of by judgment dated 19th January, 2018 observing in paragraph No.9, thus:

" 9. As a result, both the appeals will have to be partly allowed. The rate of compensation will have to be marginally increased from Rs. 450/- to Rs. 510/- per square meter. To that extent, appeal instituted by the claimant will have to be allowed.

Similarly, excess interest, which the claimant has received in terms of the impugned award, will have to be held as illegal and a direction will have to be made to refund this amount to the State. Learned Counsel for the parties submit that the two figures will be more or less proportionate and, therefore, though, the two appeals may be partly allowed, there need not be any direction for refund or re-adjustment. This is quite fair. Accordingly, both the appeals are partly allowed. However, either parties will be entitled to raise any monetary claim from each other. This means that the claimant shall be deemed to have been paid compensation @ Rs. 510/- per square meter alongwith proportionate statutory benefits thereon. Similarly, the appellant-State shall be deemed to have received refund of excess interest paid or payable by it to the claimant in pursuance of the impugned award. In view of this adjustment, there will be no liability on each of the parties to pay to the other any further amount.

10. *Both the appeals are partly allowed to the aforesaid extent. There shall be no order as to costs."*

3. In order dated 11th June, 2009 in Civil Application No. 4782 of 2009 in First Appeal No. 2982 of 2008, the Division Bench of this Court had observed that while granting stay under order dated 13th August, 2008 to the execution of award of the Reference Court, the appellant in First Appeal No. 2982 of 2008 had been directed to deposit entire amount of compensation as per award. Pursuant thereto, the appellant had deposited sum of Rs. 1,94,29,027/- in this Court. The respondent/claimant in said First Appeal, thereupon, had filed aforesaid Civil Application No. 4782 of 2009 and order came to be passed on 11th June 2009 to the effect that the claimant had been permitted to withdraw 50% of the amount deposited by appellant upon furnishing bank guarantee of a nationalized bank in respect of 25% of the amount, to be kept alive during appeal and for a period of three months thereafter and remaining 25% of the amount was permitted to be withdrawn on furnishing solvent surety to the satisfaction of the Registrar (Judicial) and an undertaking as referred to, to refund entire amount with interest. Subsequently, the respondent/claimant in First Appeal No. 2982 of 2008 had filed Civil Application bearing No. 14146 of 2010 to release furnished solvent surety to the extent of 25% of the amount according to order dated 11th June 2009, as the land under solvent surety certificate had been required for purpose of development by the respondent/claimant and while he had

ready and willing to furnish bank guarantee of a nationalized bank. Accordingly, the respondent/claimant had been allowed to furnish bank guarantee in respect of which solvent surety had been furnished earlier. Rest of the 50% of the amount is being claimed to have been lying deposited in this Court. Having regard to observations as are appearing in paragraph No. 9 of the judgment and order dated 19th January 2018, it appears to be expedient to allow the civil application in terms of Prayer Clause "B" and "C" subject to said observations. As such, Civil Application is allowed in terms of Prayer Clause "B" and "C", subject to observations in paragraph No. 9 of the judgment and order of this Court dated 19th January 2018 in First Appeal No. 1157 of 2007.

4. Civil Application is, accordingly, disposed of.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar