

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8399 OF 2017

GAJESING DAJBHAU GIRASE (DECEASED)
THROUGH HIS LRS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Advocate for Petitioner : Mr. A.B. Kale.
AGP for Respondent No. 1 : Mr. S.K. Tambe.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 06th June, 2018

PER COURT :

1. The deceased Petitioner now appearing through the LR.s., seeks to challenge the order dated 27/10/2016, passed by the learned Joint Civil Judge (Senior Division), Dhule below Exhibit 1 in Day Application No. 141/2016 by which the applicants were directed to furnish a personal bond for Rs. 31,50,000/- with an undertaking. They are also directed to furnish one solvent surety for the like amount.

2. Learned advocate for the petitioner submits that being poor farmers and having lost their lands in acquisition proceedings, it would be impossible for them to furnish a bond for a huge amount of Rs. 31,50,000/- as well as furnish one solvent surety.

3. He relies upon the judgment of this Court in the matter of **Vilas Sumersing Patil Versus Special Land Acquisition Officer and another [2012 (2) MLJ 314]** and **Deelip Vishwanath Patil and another Versus Special Land Acquisition and another [2013 (5) MLJ 243]**, to buttress his contention that even if the State might have preferred an Appeal against the enhanced compensation granted to the deceased Petitioner, a bond or a solvent surety or a bank guarantee cannot be sought by the LAR Court, if the judgment impugned in the First Appeal has not been stayed. He further submits that though in this case, the acquiring body has preferred First Appeal No. 4082/2017, the same has been admitted by this Court vide order dated 04/12/2017 and no interim relief has been granted to the appellant.

4. The learned AGP has strenuously opposed this petition on behalf of respondent No. 1. Contention is that once the First Appeal is admitted, there is every possibility that the appellant may succeeded. If this so happens, it would be an onerous task to recover the huge amount, which the applicants seek to withdraw, keeping in view that they have lost their land and once

the money reaches them, it is likely to be spent and would be irrecoverable.

5. I find that this Court has dealt with similar cases in various matters and has directed tendering of an affidavit/undertaking by the applicant if the impugned award is not stayed by this Court.

6. In **Vilas Sumersing Patil and Deelip Vishwanath Patil** (*supra*), this Court has set aside the direction of the LAR Court seeking a bank guarantee and instead has directed the petitioner to file an undertaking that he would bring back the amount and deposit it in the Court, if the State Government/appellant succeeds in the First Appeal.

7. Considering the above and the law crystallized by this Court in various judgments, this petition is partly allowed. The impugned order dated 27/10/2016, is quashed and set aside. Day Application No. 141/2016 is partly allowed by directing the petitioners to tender their individual affidavit undertaking to the Joint Civil Judge (Senior Division), Dhule, clearly stating that if the appellant succeeds in First Appeal No. 4082/2017, these

petitioners would re-deposit the withdrawn amount in the Court within eight weeks from the date of such judgment. The individual affidavit undertaking shall be accompanied by a recent photograph of each of the petitioners with a copy of the Election Commission's Voter ID Card / Aadhar Card, copy of the address proof and identification by their learned advocate.

(RAVINDRA V. GHUGE, J.)

S.P.C.