

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

906 CIVIL APPLICATION NO. 8100 OF 2018
IN
FIRST APPEAL NO. 4525 OF 2017

ASARAM JAVJI JADHAV
VERSUS
THE STATE OF MAHARASHTRA & ANR.

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Mr. P.A.Bide h/f Mr. V.B.Wayal, Advocate for
Applicant.
Mr. P.G.Borade, A.G.P. for R -1.
Mr. S.S.Thombre, Advocate for R -2.

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CORAM : K.K.SONAWANE, J.
DATE : 5th JULY, 2018
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ORAL ORDER :

1. Heard learned counsel for the applicant and learned counsel for respondent No. 2 – acquiring body. Learned A.G.P. also present.
2. Perused the application seeking permission for withdrawal of amount deposited in this Court.
3. Learned counsel for the applicant submits that the S.L.A.O. granted Rs. 480/- per R. to the land of the applicant under acquisition, whereas the Reference Court enhanced the same @ Rs. 1,600/- per R. More over, 136 trees of Mango in the field of the applicant were under acquisition. The Reference Court considered the valuation of the trees carried out by the Horticulture Expert and thereafter awarded the amount. Therefore, the learned counsel for the applicant prayed to allow the applicant to withdraw the decretal amount deposited in this Court.

4. Learned counsel for respondent No. 2/acquiring body raised objection and submits that the Reference Court committed error while determining the market value of the land under acquisition as well as the valuation of the trees located in the acquired land. He submits that the appellant – acquiring body has every hope of success in the Appeal. Therefore, the applicant may not be allowed to withdraw the amount.

5. After giving anxious consideration to the submissions advanced on behalf of both sides, there is no dispute with the market value determined by the Reference Court as four times of the market value assessed by the S.L.A.O. Moreover, there were joint survey measurement of the land under acquisition and the Reference Court has mentioned that in the joint survey report, there were 136 mango trees shown in the acquired land. In view of attending circumstances and the evidence on record, the Reference Court determined the valuation of the trees payable to the claimants. In such circumstances, there would not be any propriety to preclude the applicant/claimant for enjoying the fruits of the decree in the proceeding which he is pursuing since year 1999. However, in regard to the interest of the appellant – acquiring body, some fetters can be imposed on the applicant while withdrawing the amount. Definitely it would sub-serve the purpose to safe-guard the interest of the appellant – acquiring body. Hence, the application deserves to be allowed.

6. Accordingly, the application stands allowed. The applicant is hereby permitted to withdraw 50% of the compensation amount deposited in this Court on furnishing undertaking that he would refund the amount so withdrawn in case any contingency arises in the Appeal. The applicant is further permitted to allow rest of the 50% amount on submitting solvent security/surety of like amount

to the satisfaction of Registrar of this Court.

7. Accordingly, the application stands disposed of in above terms. Registry to do the needful to facilitate for disbursement of amount in favour of applicant.

[K.K.SONAWANE]
JUDGE

KNP/C.A. 8100.2018 in F.A. 4525.2017