

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

**969 CIVIL APPLICATION NO. 9961 OF 2018
IN FA/2309/2010**

TAYAPPA BARMA GAIKWAD

.. Applicant

VERSUS

M.I.D.C. THROUGH DIVISIONAL /REGIONAL
OFFICER LATUR AND ANR

..Respondents

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Advocate for Applicant : Shri P.R. Katneshwarkar

Advocate for Respondent No.1 : Shri S.S. Dande

AGP for Respondent No.2: Shri A.M. Phule

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CORAM : PR. BORA, J.

Dated: September 05, 2018

PER COURT :

1. Heard the learned Counsel appearing for the respective parties.

2. The learned Counsel for the applicant submitted that, in Civil Application No.8826 of 2011 with the connected civil applications, this Court vide order passed on 02.09.2011 had permitted the applicants to withdraw 50% of the amount, which is deposited by the Respondent No.1 - Acquiring Body in this Court: half of it was permitted to be withdrawn without furnishing any security, whereas remaining half of it was

permitted to be withdrawn by furnishing Bank guarantee of Nationalized / Scheduled Bank and 50% of the total amount was directed to be invested in the Fixed Deposit Receipt in any Nationalized or Scheduled Bank. The learned Counsel submitted that, the aforesaid order was subjected to challenge before the Hon'ble Apex Court and the Hon'ble Apex Court in Civil Appeal No.3825 of 2015 (Arising out of SLP (C) No.17114 of 2014) has passed the following order.

- “1. Leave granted.
2. This appeal is directed against the judgment and order passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Civil Application No.8826 of 2011 in First Appeal No.2309 of 2010, dated 02.09.2011.
3. Heard the learned Counsel for the parties to the *lis*.
4. In view of the order passed in Civil Appeal No.10850 of 2011 arising out of Special Leave Petition (C) No.27265 of 2011, it is directed that the 50% of the enhanced compensation granted to the appellant shall be released without security whereas the balance of 50% shall be released to them on furnishing security to the satisfaction of the Collector.
5. The appeal is disposed of accordingly.”

3. In view of the order passed by the Hon'ble Apex Court, the applicant has preferred the present application and

has prayed to allow him to withdraw the Bank guarantee, which is submitted in this Court and has also sought directions to the registry for taking appropriate steps as per the order passed by the Hon'ble Apex Court. Learned Counsel further pointed out that, after passing of the aforesaid order by the Hon'ble Apex Court, the Division Bench of this Court while order passed on 18.10.2013 has permitted similar withdrawal in some other matters. The learned Counsel Shri Dande submitted for passing appropriate orders.

4. In view of the submissions so made, the following order is passed.

ORDER

- (i) The application is allowed in terms of prayer clause-'A'.
- (ii) It is clarified that, the remaining 50% amount lying with this Court in fixed deposit may not be permitted to be withdrawn unless the applicant submits the security to the satisfaction of the Collector.

(PR. BORA, J.)

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