

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (STAMP) NO.4678 OF 2018

IN

FIRST APPEAL NO.19 OF 2015

Shri Tukaram Kana Joshi & Ors.] ... Applicants

In the matter of :

The State of Maharashtra & Anr.] ... Appellants

Versus

Shri Tukaram Kana Joshi & Ors.] ... Respondents

Mr. R. D. Soni a/w Mr. S. N. Gawade i/b Shree & Co. for Applicants.
Mr. A. R. Patil, AGP for State - Respondents.

**CORAM :- K. K. TATED &
SARANG V. KOTWAL, JJ.**

DATE :- 16 FEBRUARY, 2018

P. C. :-

1. Heard the learned Counsel for parties.

2. This Civil Application is preferred by the Claimants for withdrawal of the remaining amount towards compensation in respect of the acquired land.

3. Mr. Soni, learned Counsel for the Claimants, submits that the present First Appeal is preferred by the State of Maharashtra challenging the Judgment and Award dated 03/05/2014 passed by the Civil Judge Senior Division, Thane, in Reference No.28 of 2013.

He submits that the Reference Court awarded compensation at the rate of Rs.45,000/- per sq. meter. He submits that they also preferred Cross Objection (Stamp) No.5101 of 2015 claiming the compensation at the rate of Rs.90,000/- per sq. meter.

4. Learned Counsel for the Claimants submits that this Court, by order dated 14/01/2015 in Civil Application No.128 of 2015, permitted the Claimants to withdraw 75% of the deposited amount on furnishing solvent surety / security to the satisfaction of the Reference Court. He submits that this Court further directed to deposit the remaining amount in a fixed deposit at any nationalized bank for a period of three years. He submits that as per the order dated 14/01/2015, they withdrew the 75% amount by furnishing solvent surety to the satisfaction of the Reference Court. He submits that the Claimants preferred the present Civil Application for permitting them to withdraw the remaining 25% amount by furnishing bank guarantee of any nationalized bank. He submits that the Claimants undertake to this Court that they will keep the bank guarantee in force till the hearing and final disposal of the First Appeal. He submits that in the interest of justice, this Court be pleased to allow the present Civil Application. He further submits that in the similar situation, this Court, in another First Appeal No.48 of 2010, by order dated 04/08/2010, permitted the Claimants to withdraw the entire amount by furnishing bank guarantee. The said order is at Exh.C to the present Civil Application. He submits that if the Civil Application is not allowed, irreparable loss will be caused to the Claimants.

5. On the other hand, Mr. Patil, learned AGP for State, submits that the Claimants may be directed to provide bank guarantee of any nationalized bank and it should be continued till the hearing and final disposal of the First Appeal.

6. Considering the submissions made by the learned Counsel for the Claimants and the averments made in the Civil Application and as the Claimants are ready and willing to provide bank guarantee of a nationalized bank, we are satisfied that the Claimants have made out case for allowing this Civil Application. Hence, the following order.

ORDER

- (I) Claimants are permitted to withdraw remaining 25% award amount along with accrued interest, if any, by furnishing bank guarantee of any nationalized bank.
- (ii) Claimants to give undertaking that they will keep in force the said bank guarantee till the hearing and final disposal of the First Appeal and / or till further orders of this Court.
- (iii) Civil Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(K. K. TATED, J.)