

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

923 CIVIL APPLICATION NO.561 OF 2019
IN
FA/71/2019

SARASWATI PANDIT THOMBARE AND ORS.
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

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Mr. A.H.Koralkar, Advocate for applicants.

Mr. P.M.Kulkarni, A.G.P. for r – 1.

Mr. S.B.Patil, Advocate for R – 3.

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CORAM : V.L.ACHLIYA, J.

DATE : 12/04/2019

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ORAL ORDER :

1. The applicants have moved this application for withdrawal of amount of Rs. 20,61,936/- deposited by the appellant/acquiring body.

2. Heard learned counsel for applicants and counsel representing the acquiring body. Perused the Award passed by the reference Court.

3. Learned counsel for applicants submits that the reference Court has enhanced the compensation based upon the evidence adduced in the matter. There is absolutely no case to be considered in appeal. The lands of the applicants were acquired in

the year 2004. Learned counsel further submits that in some of the references arising out of same acquisition, the acquiring body has decided not to prefer appeal and deposited the amount in terms of award passed by the reference Court.

4. On the other hand, learned counsel for appellant/acquiring body submits that the appellant has good case to succeed in appeal. It is submitted that the compensation awarded by the Special Land Acquisition Officer [for short, 'S.L.A.O.'] for jirayat land @ Rs. 500/- per R. has been enhanced to Rs. 2,500/- per R. and the compensation awarded @ Rs. 575/- per R. for irrigated land has been enhanced to Rs. 3,750/- per R. by the reference Court. It is further submitted that the enhancement made by the reference Court is without any basis and not legally sustainable in law. The S.L.A.O. has awarded compensation on the basis of comparable sale instance of same village i.e. sale deed dated 13/01/2004 in respect of land G.No. 72 admeasuring 1 H. 15 R. for total consideration of Rs. 52,174/-. Although the sale instance of the land acquired from same village and adjoining to land bearing G.No. 72 available in the matter, the reference Court has enhanced compensation on the basis of sale instance of land situated in other village i.e. Banegaon. So also, the compensation has been awarded by treating the land as semi irrigated land though no such

evidence was adduced by the respondent/claimants. Similarly, the compensation has been separately awarded towards trees on the basis report of private valuer. In this back-ground, the learned counsel submits that the appellant has good case to succeed in appeal. In case the claimants are allowed to withdraw the amount, it will be difficult to recover the same.

5. On due consideration of the submissions advanced in the light of challenge raised in the appeal and award passed by the reference Court, I am of the view that arguable case has been made out to be considered in appeal. In that view, I am inclined to pass the following order.

ORDER

[i] Subject to out-come of the appeal, the applicants are allowed to withdraw the amount to the extent of 40% of the amount deposited by the acquiring body on furnishing written undertaking to the effect that in case the award is set aside or modified, the applicants shall re-deposit the amount in the Court within 8 weeks.

[ii] The balance amount be invested in fixed deposit with nationalized bank initially for a period of 28 months with direction to renew the same after the

period of maturity till disposal of appeal.

[iii] The application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP.