

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

935 CIVIL APPLICATION NO.1638 OF 2019
IN FAST/20274/2017

VISHWAMBHAR NAMDEO PATIL (DIED) THR LRS LAXMIBAI AND
ANR
VERSUS
THE EX. ENGINEER, MINOR IRRIGATION DIV. OSMANABAD AND
ORS

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Advocate for Applicants : Mr. Vivekanand V. Ingale
Advocate for Respondent No. 1 : Mr. U.P. Giri
AGP for Respondent No.2 : Mr. B.V. Virdhe

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CORAM : V.L. ACHLIYA, J.

DATED : 11th APRIL, 2019

PER COURT:-

1. The applicant has moved this application for withdrawal of Rs.3,61,121/-, deposited by the acquiring body in terms of conditional order passed by this Court to stay the execution of award.
2. Heard the learned counsel for the applicants and the Advocate representing the appellant - acquiring body. Perused the judgment and award passed by the Reference Court.
3. In brief, in the contention of the learned counsel for the applicants that the land admeasuring 43 R was acquired by the appellant - acquiring body in the year 1996, but the possession of the land was taken in the year 1993. The Special Land Acquisition Officer has awarded the compensation at the rate of Rs.255 per R and the same has been enhanced to Rs.1,400/- per R by the

Reference Court. The compensation awarded by the Reference Court is based upon the evidence adduced by applicants - claimants in support of enhancement of compensation. It is submitted that the applicants have no case to succeed in appeal. The applicants have lost the possession of land for the period of more than 24 years, still they have not received the compensation. He, therefore urged to allow the applicants to withdraw the amount deposited by the acquiring body.

4. On the other hand, the learned counsel for the appellant - acquiring body oppose the application with contention that compensation awarded is excessive and not supported by the legally admissible evidence. By referring the award, the learned counsel submits that the sale instances of lands located two kilometers away from the village from where land was acquired relied for determination of compensation by the Reference Court.

5. On due consideration of the submissions advanced in the light of overall facts of the case and the judgment and award passed by the Reference as well as the challenge raised in the appeal, I am of the view, passing of following order would meet the ends of justice.

ORDER

[i] Subject to outcome of the appeal, the applicants are permitted to withdraw the amount to the extent of 60% of the amount deposited by the acquiring body on furnishing written undertaking to the satisfaction of the Registrar (Judicial) to the effect that in the event the appeal is allowed or award is modified or set aside and the applicants are required to re-deposit the amount withdrawn, the applicants shall deposit the same within a period of eight weeks from the date of such order.

[ii] The balance amount to the extent of 40% of the amount deposited by the acquiring body be invested in the fixed deposit, initially for a period of 28 months with any Nationalized bank with standing instructions to renew the same for further period till disposal of the appeal or further orders to be passed by this Court, whichever is earlier.

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

(V.L. ACHLIYA)
JUDGE

SPR