

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

923. CIVIL APPLICATION NO. 3643 OF 2019
IN FA/3836/2017

LIMBRAJ TUKARAM RAJGURU
VERSUS
THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION,
OSMANABAD THROUGH GMIDC AURANGABAD

Mr. Mr. V.V. Ingle, Advocate for applicant
Mr. S.R. Dheple, Advocate for respondent No.1
Mr. P.M. Kulkarni, Asstt. Govt. Pleader for Respt. No.2

CORAM : V.L. ACHLIYA, J.

DATE : 10th April, 2019

PER COURT :

1. The applicant i.e. claimant has moved this application seeking withdrawal of amount deposited in terms of the award passed by the Reference Court.

2. The learned Counsel for appellants submits that the appellants have good case to succeed in appeal. By referring the judgment and order passed by the Reference Court, the learned Counsel submits that the sale instances relied upon for enhancement

of compensation are in respect of sale transactions which have taken place after issuance of notification U/S. 4 of the Land Acquisition Act, 1894 and that too, in respect of small pieces of land, which cannot be treated as comparable sale instances in determination of the compensation. The Special Land Acquisition Officer awarded compensation at the rate of Rs. 180/- per Are and same has been enhanced to Rs. 1500/- per Are by the Reference Court. It is further submitted that the interest awarded U/S. 28 of the Land Acquisition Act over the enhanced compensation has been awarded from the date of notification U/S. 4 of the L.A. Act and same is not sustainable in the light of decision of the Full Bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari,** reported in **2016 (4) ALL MR 513(FB),** wherein it is held that interest U/S. 28 and 34 of the L.A. Act can be awarded over the enhanced amount of compensation with effect from date of the award.

3. Learned Advocate for the applicant-claimant supported the judgment and award passed by the Reference Court.

4. Considering the submissions advanced, I am of the view that passing of the following order would meet the ends of justice.

O R D E R

I) Subject to outcome of the appeal, the applicant is permitted to withdraw the amount to the extent of 60% of the amount deposited on furnishing written undertaking to the satisfaction of the Registrar (Judicial) with condition that in case the award is set aside or modified, the applicant shall redeposit the amount within eight weeks from the date of order.

II) After making payment of 60% of the amount deposited, the balance amount of 40% together with interest accrued be invested in fixed deposit with Nationalized Bank initially for a period of 28 months, with standing instructions to renew the same till disposal of the appeal.

III) The application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

Madkar