

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

934. CIVIL APPLICATION NO.3736 OF 2019
IN FA/2463/2017

CHANDRAKANT SHANKARRAO VEER AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND ORS

Mr. A.B. Kale, Advocate for applicants
Mr. B.V. Virdhe, Asstt. Govt. Pleader for Respts. No. 1 & 2
Mr. S.G. Sangle, Advocate for Respt. No.3-appellant

CORAM : V.L. ACHLIYA, J.

DATE : 10th April, 2019

PER COURT :

1. This application is moved for withdrawal of the amount deposited by the acquiring body in terms of the judgment and award passed by Shri P.B. More, the then Civil Judge (Senior Division), Osmanabad, in L.A.R. No. 434 of 2009 on 4th October 2013.

2. Mr. Kale, learned Counsel for the applicants submits that the land was acquired in the year 2005. The award was passed on 27th May 2006. The Special Land Acquisition Officer assessed compensation without following the principles to determine the

compensation. The Reference Court while determining the market value of the land acquired considered the comparative sale instances of similarly situated lands and the award passed in L.A.R. No. 630/2011 wherein the Reference Court has awarded compensation @ Rs. 6000/- per R for *Jirayat* land. In this background, the learned Counsel submits that the enhancement of compensation @ Rs. 6000/- per R cannot be said to be excessive. It is submitted that though the acquisition was taken place in the year 2005, the applicants are deprived of from receiving compensation for more than 14 years. In this background, the learned Counsel urged to allow the applicants to withdraw the amount deposited by the acquiring body. By referring the order dated 15th November 2019 (Coram: Mr. P.R. Bora, J.) and order dated 25th June 2018 (Coram: Mr. K.K. Sonavane, J.) passed in connected matters seeking withdrawal of the amount, the learned Counsel urged to allow the applicants to withdraw the amount to same extent.

3. Mr. Sangale, learned Counsel for the acquiring body submits that the appellants have good case to succeed in appeal. By referring the impugned judgment and award, the learned Counsel submits that the enhancement of compensation by the Reference Court is too much on higher side and without legally sustainable evidence. It is submitted that the Special Land Acquisition Officer

has awarded the compensation in the range of Rs. 790/- to 910/- per R and the same has been enhanced by the Reference Court to Rs. 6000/- per R without any evidence adduced to support such enhancement. In this context, the learned Counsel invited attention to the judgment and award passed by the Reference Court and submits that the enhancement of compensation has been made purely on the basis of whims and desire of the learned Judge of the Reference Court. It is submitted that the award passed in L.A.R. No. 630/2011, on the basis of which compensation has been awarded @ Rs. 6000/- per R, is subject matter of appeal before this Court and, therefore, same could not have been treated as a basis for determination of compensation by the Reference Court. It is submitted that the reference is to be decided on the basis of evidence adduced before the Reference Court and not on the basis of inference drawn on the basis of award passed in some other reference proceedings.

4. On due consideration of submissions advanced in the light of judgment and award passed by the Reference Court, I am of the prima-facie view that there is arguable case in favour of appellants. In case applicants are permitted to withdraw the entire amount, it will be difficult to recover the amount. Considering the overall facts of the case, challenge raised in appeal and orders

passed in identical matters, I am of the view that the following order would meet the ends of justice.

O R D E R

I) Subject to outcome of appeal, applicants are permitted to withdraw amount to the extent of 50% 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 applicants shall redeposit the amount within eight weeks from the date of the order.

II) After making payment of 50% of the amount deposited, the balance amount together with interest accrued be invested in fixed deposit in Nationalized Bank initially for a period of 28 months with standing instructions to renew the same time to time till further orders from this Court or disposal of the appeal, as the case may be.

III) Civil Application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE