

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

920 CIVIL APPLICATION NO.3314 OF 2019
IN FA/713/2019

HARIBA DEVRAO MANE (DIED) THR LRS NARAYAN AND ORS
VERSUS
THE EX. ENGINEER, MINOR IRRIGATION DIVISION
OSMANABAD THR MOHAN B KADE AND ANR

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Advocate for Applicants-Claimants : Mr. H.P. Bondar
Advocate for Respondent No.1 : Mr. S.C. Arora
AGP for the Respondent No.2 : Mr. B.V. Virdhe

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CORAM : V.L. ACHLIYA, J.

DATED : 11th APRIL, 2019

PER COURT:-

1. The applicants – claimants have filed this application for withdrawal of amount of Rs.77,29,140/- deposited by respondent no.1 – appellant – acquiring body in terms of conditional order passed by this Court to stay the execution of award passed by the Reference Court.
2. Heard the learned counsel for the applicants - claimants and respondent no.1 – acquiring body as well as AGP for Respondent no.2 – State.

3. Learned counsel for the applicants submits that the land admeasuring 6 Hectare 33 R owned by Hariba Devrao Mane, the predeceased father of the applicants was acquired in the year 1994 for Khamaswadi Minor Project. The meager amount at the rate of Rs.205/- per R was paid in terms of the award passed by the Special Land Acquisition Officer in the year 1997. The Reference Court has enhanced the amount of compensation from Rs.205 per R. to Rs.1843/- per R based upon the evidence adduced in the matter as well as the compensation granted in other land acquisition references arising out of similar situated lands. In this background, the learned counsel submits that there is absolutely no scope of challenge in appeal and urged to allow the applicant to withdraw the amount.

4. On the other hand, the learned counsel for the respondent – acquiring body opposed the application with contention that the enhancement of compensation from Rs.205/- per R to Rs.1843/- per R is excessive and without legally admissible evidence adduced in the matter on the part of the applicant. It is submitted that the compensation was enhanced on the basis of guess work and without any evidence adduced in the matter. It is further submitted that in case the applicants are permitted to withdraw the amount, it will be difficult to recover the amount from him in the event the appeal is allowed or award is modified.

5. I have considered the overall facts of the case, the challenge raised in the appeal and the fact that the applicants are deprived of the compensation of the land acquired way back in the year 1994, I am of the view, permitting the applicants to withdraw the amount to the extent of 50% on furnishing undertaking and investing the balance amount in Fixed Deposit would meet the ends of justice by directing the expeditious disposal of the appeal.

Hence, the following order is passed :-

O R D E R

i] Subject to outcome of the appeal, the applicants are permitted to withdraw the amount to the extent of 50% 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 50% 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