

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

41 CIVIL APPLICATION NO.13933 OF 2019

IN FA/730/2018

VILAS VASANTRAO ZADPIDE

VERSUS

THE EX. ENGINEER, PATBHANDARE MAJBUTIKARAN DIVISION, OMERGA
AND ORS

...

42 CIVIL APPLICATION NO.13936 OF 2019

IN FA/729/2018

SARJERAO HARISCHANDRA BHOSALE

VERSUS

THE EX. ENGINEER, PATBHANDARE MAJBUTIKARAN DIVISION, OMERGA
AND ORS

...

43 CIVIL APPLICATION NO.13937 OF 2019

IN FA/731/2018

ANNASAHEB VASANTRAO ZADPIDE

VERSUS

THE EX. ENGINEER, PATBHANDARE MAJBUTIKARAN DIVISION, OMERGA
AND ORS

...

44 CIVIL APPLICATION NO.13938 OF 2019

IN FA/733/2018

SHRIDHAR GANAPATI SHINDE

VERSUS

THE EX. ENGINEER, PATBHANDARE MAJBUTIKARAN DIVISION, OMERGA
AND ANR

...

45 CIVIL APPLICATION NO.13939 OF 2019

IN FA/735/2018

ANNASAHEB SARJERAO BHOSALE

VERSUS

THE EX. ENGINEER, PATBHANDARE MAJBUTIKARAN DIVISION, OMERGA
AND ORS

...

46 CIVIL APPLICATION NO.13940 OF 2019

IN FA/734/2018

SURESH SARJERAO BHOSALE

VERSUS

THE EX. ENGINEER, PATBHANDARE MAJBUTIKARAN DIVISION, OMERGA
AND ORS

...

**47 CIVIL APPLICATION NO.13942 OF 2019
IN FA/732/2018
SHAHURAJ VASANTRAO ZADPIDE
VERSUS
THE EX. ENGINEER, PATBHANDARE MAJBUTIKARAN DIVISION, OMERGA
AND ORS**

...

Advocate for Applicant : Mr. V.D. Sapkal, h/f Mr. Patil Laxmikant C.

Advocate for Respondent : Mr. Avishkar S. Shelke

A.G.P. for Respondent No.2: Mr. S.S. Dande.

CORAM : MANGESH S. PATIL, J.

DATE : 05/12/2019

PER COURT :

Heard both the sides.

2. These are the applications by the original claimants seeking withdrawal of the balance 50 % of the amount which still remains deposited with this Court.

3. The learned advocate for the applicants/claimants submits that by the order dated 24.01.2018 the claimants were allowed to withdraw 50 % of the amount of compensation deposited in this Court. Being aggrieved they had approached the Supreme Court in Special Leave Petition (Civil) Diary No. 39912/2018. By the order dated 16.11.2018 they were allowed to withdraw the Special Leave Petitions and liberty was granted to them to seek modification of the order dated 24.01.2018 and pursuant to such liberty now the present applications have been filed.

4. The learned advocate submits that the Reference Court has clearly relied upon a sale instance dated 16.09.2003 which was prior to the notification issued under Section 4 of the Land Acquisition Act dated 26.02.2004. Based on the rate agreed in that sale-deed the Reference Court has fixed the compensation. When it has determined the compensation for the specific reasons, the question of difference between the rate granted by the Special Land Acquisition Officer and the one granted by the Reference

Court is inconsequential. The applicants/claimants have been deprived of the right to have compensation for last more than two decades. The First Appeals are not likely to be disposed of in the foreseeable future. They have lost their source of earning and if not the entire balance 50 % at least 25 % of the amount may be allowed to be withdrawn by furnishing solvent security.

5. The learned advocate for Acquiring Body strongly opposes the request. He submits that it is a matter of review and reconsideration of the earlier order and the propriety demands that in the absence of any supervening circumstance it may not be considered. He would point out that in fact the Special Leave Petitions were simply withdrawn and only a liberty was granted to seek modification and that does not imply that in the absence of cogent and sufficient reasons this Court could modify the earlier order.

6. The learned advocate further submits that the sale instance which was for a lesser consideration has been ignored and the Reference Court has awarded the compensation manifold. Even the interest under Section 28 of the Land Acquisition Act has been awarded from the date of the possession when it ought to have been from the date of the Award and the difference could be over three years. Taking into account all these aspects, when the applicants/claimants have been allowed to withdraw 50 % of the amount, that should suffice.

7. It is apparent that the Special Leave Petitions impugning the order passed by this Court allowing the applicants/claimants to withdraw 50% of the amount has not been decided on merits. It is only when the applicants/claimants sought to withdraw those petitions, at their request a liberty was granted to them to seek modification. It does not imply that a modification *per se* can be made sans any ground.

8. Taking into account the fact that the order dated 24.01.2018 does

not specifically assign any reason as to why merely 50% amount was allowed to be withdrawn, in my considered view, it would be appropriate to reconsider the matter.

9. The Reference Court has placed reliance on a sale instance which is prior to the notification under Section 4 of the Land Acquisition Act. True it is that it has simultaneously ignored another sale instance which is for a lesser consideration (Exhibit 61). Needless to state that all these aspects will have a bearing at a full fledged hearing. But when the assessment is based on the sale instance, allowing the applicants to withdraw 50 % of the amount of compensation needs to be reconsidered.

10. Simultaneously, if one bears in mind the fact that the interest under Section 28 of the Land Acquisition Act has been awarded from the date of the possession when it should have been from the date of the award and the period comes to around three years, it would be appropriate to allow the claimants to withdraw an additional 25 % of the amount deposited in this Court by furnishing solvent security.

11. The applications are allowed. In addition to the amount of 50 % allowed to be withdrawn by the order dated 24.01.2018, the applicants/claimants are entitled to withdraw another 25 % of the amount with accrued interest deposited in this Court by furnishing solvent security to the satisfaction of the Registrar (Judicial).

12. The Civil Applications are disposed of.

(MANGESH S. PATIL, J.)

mkd