

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

**1011 CIVIL APPLICATION NO.4596 OF 2016
IN FA/1642/2015**

**RANGNATH RAMCHANDRA HARER AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

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Advocate for Applicants : Mr. Jayabhar Dattatraya R.
AGP for Respondents/State : Mr. A.M. Phule
Advocate for Respondent No.2 : Mr. V.S. Bedre

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 4th OCTOBER, 2019.

ORDER :

. Present application has been filed by original claimants for withdrawal of the amount to the extent of their share. Though the remark shows that the Advocate for applicants has not taken steps against unserved respondent Nos.3-A, 3-B, 3-D and 3-F, it is to be noted that the learned Advocate for the applicants has filed service affidavit of respondent Nos.1, 2, 3A to 3F and 4. Perusal of the track consignment shows that the packets were delivered at the respective addresses. That means the service to them is complete.

2. Learned Advocate Mr. H.U. Dhage for appellants in First Appeal No.724 of 2015 submits that he is strongly opposing the application for withdrawal of the amount. It is his contention that in fact the present applicants are not entitled to get any amount of compensation and the learned trial Court has wrongly apportioned the amount of compensation. It is also his contention that if the present applicants are allowed to withdraw the amount, then it will be difficult for those appellants to recover the said amount. Perusal of the judgment of the reference Court would show that tenant has been allowed to get compensation of 75% and the land lord has been given 25%. Paragraph No.21 of the impugned judgment makes it clear that one of the co-claimant had made statement that they are the protected tenants and therefore, they should be given 75%. The said contention was then objected by one Sayyed, who is the appellant in First Appeal No.724/2015.

3. Taking into consideration the documents which were on record and taking note of the decision in **Mangetram Vs. State of Haryana [AIR 1996 SC 33]**, the said apportionment appears to have been made.

4. Learned Advocate for the appellants in First Appeal No.724/2015 has prayed that the matter be taken up for admission. Taking

into consideration the pendency with the Court, his said request cannot be allowed. That cannot be the hurdle to decide this application also. When a competent Court has come to the conclusion and the apportionment has been made, then there is no hurdle in allowing partial withdrawal of the amount. At the same time, interest of both the parties is then required to be protected. In this case, the amount, that has been deposited with this Court, is Rs.2,48,87,448/-. Under such circumstance, taking into consideration the apportionment that was made by the reference Court, so also, the point that the acquiring body has filed appeal challenging the quantum stating that it is on higher side, so also, protecting the interest of the appellants in First Appeal No.724 of 2015, at this stage, applicant No.1, applicant Nos.2-A to 2-G collectively, applicant No.3, applicant Nos.4-A to 4-C collectively and applicant No.5 are allowed to withdraw amount of Rs.5,00,000/- each.

5. Applicants shall file an undertaking within a period of eight weeks that they would make the said amount good, if directed at the time of final disposal of the appeal.

6. Civil Application stands disposed of accordingly.

7. Learned Advocate Mr. H.U. Dhage makes a statement that he wants to challenge the this order before the Apex Court and for that purpose he has requested to grant stay to the said order.

8. Taking into consideration the reasons already stated, when a competent Court has come to the conclusion and by safeguarding the interest of all the parties, the order is passed, there is no question of granting any stay.

(SMT. VIBHA KANKANWADI, J.)

SCM