

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

**36 CIVIL APPLICATION NO.5416 OF 2019
IN FA/1908/2016 WITH FA/1041/2016 WITH FA/1042/2016 WITH
CA/1787/2018 IN FA/1908/2016 WITH CA/1789/2018 IN FA/1908/2016
WITH CA/4758/2018 IN FA/1908/2016 WITH CA/7858/2019 IN
FA/1908/2016**

**HANUMANT TULJARAM GOJAMGUNDE DIED THR HIS L.R.S SHIVAJI
VERSUS
THE CHIEF OFFICER MAHARASHTRA HOUSING AND AREA
DEVELOPMENT, AURANGABAD AND ORS**

...
Advocate for Applicant : Mr. Venjane Tukaram M.
Advocate for Respondents : Mr. Sanghmitra Wadmare
...

CORAM : MANGESH S. PATIL, J.

DATE : 17.12.2019

PER COURT :

Heard both the sides. This is an application by the original claimant seeking to withdraw Rs.1,44,51,804/- out of the amount of Rs.2,67,86,437/- deposited by the acquiring body.

2. The learned advocate Mr. Venjane for the claimant submits that by the earlier order dated 05.10.2018, the applicant was allowed to withdraw 50% of the amount then deposited by the acquiring body. At that time the acquiring body had deposited only half of the amount of award. Subsequently the acquiring body deposited the remainder and therefore the claimants may be allowed to withdraw 50% of the remainder deposited by the acquiring body subsequently.

3. The learned advocate Mr. Venjane further submits that in some sister matters before the Division Bench, in First Appeal No.5137/2018 and First Appeal No.1013/2017, arising out of the same acquisition, the claimants there in have been allowed to withdraw 50% of the deposited amount.

4. The learned advocate Mrs. Wadmare for the acquiring body strongly opposes the application. She submits that in fact the acquisition was under the Maharashtra Housing and Area Development Authority, Act wherein by virtue of the provision of Section 48 the claimant is merely entitled to claim interest @ of 4% and 9% whereas the reference court in these matters has passed award under the Land Acquisition Act which prescribes interest to be paid at higher rate than this. Therefore the claimant may not be allowed to withdraw any compensation now.

5. Apparently, the entire amount of the award has been deposited by the acquiring body in two phases. Around 50% was deposited initially out of which the claimant was allowed to withdraw 50% which turns out to be 25% of the entire amount of the award together with interest. Now again the claimants are seeking to withdraw 50% of the amount deposited by the acquiring body in the second phase which again constitutes 25% of the entire amount of the award together with interest.

6. The question whether the interest assessed by the reference court according to the Land Acquisition Act is legal or should have assessed compensation, bearing in mind the provision of the MHADA, Act is a matter

to be pondered upon while deciding the First Appeal. The fact remains that the claimants are now seeking to withdraw 25% of the amount of the entire compensation. Few other claimants have been allowed to withdraw 50% by the Division Bench and even the applicants can be granted same relief.

7. The application is allowed. The applicant is allowed to withdraw 50% of the amount deposited by the acquiring body subsequently, 50% by furnishing undertaking in usual terms and 50% by furnishing a bank guarantee of a Nationalized Bank.

(MANGESH S. PATIL, J.)

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