

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

**CIVIL APPLICATION NO.13294 OF 2018 IN
FIRST APPEAL NO.359 OF 2017**

Shripati Raghunathrao Pawar, Died L.Rs.
Smt. Mathurabai Shripati Pawar & ors. ...APPLICANTS

VERSUS

The State of Maharashtra & ors. ...RESPONDENTS

.....
Shri V.S. Tanwade, Advocate for applicants
Shri S.P. Tiwari, A.G.P. for State
Shri R.D. Raut, Advocate for respondent No.3

.....
WITH

**CIVIL APPLICATION NO.13296 OF 2018 IN
FIRST APPEAL NO.360 OF 2017**

Bhanudas Raghunathrao Pawar, Died L.Rs.
Vithal Bhanudas Pawar & ors. ...APPLICANTS

VERSUS

The State of Maharashtra & ors. ...RESPONDENTS

.....
Shri V.S. Tanwade, Advocate for applicants
Shri S.N. Morampalle, A.G.P. for State
Shri R.D. Raut, Advocate for respondent No.3

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**CORAM: T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATED : 31st January, 2019.

ORAL ORDER :

1. Both the Civil Applications are filed for permission to withdraw the compensation amount. Heard both sides. The appeals are filed by the acquiring body and as per the directions given by the Court, the acquiring body has deposited entire amount of compensation, and the owners - respondents want to withdraw that compensation amount.

2. This Court has carefully gone through the decision of the Land Acquisition Reference No.852/2002 decided with Land Acquisition Reference No.851/2002 by the learned Civil Judge, Senior Division, Osmanabad on 1.10.2010. In that matter, there was acquisition of some portion of land Gat No.412. In the present matter, there is acquisition of some portion of land Gat No.413 and 417. The purpose of previous acquisition was different than the purpose of present acquisition. This Court has gone through the reasoning given by the Reference Court for deciding compensation in Land Acquisition Reference No.852/2002 and the reasoning shows that the Reference Court considered the circumstance that the land acquired was touching Solapur - Dhule National Highway (No.211). One sale instance of N.A. plot was considered by the Reference Court in that matter and the plot was already given City Survey number for Osmanabad city and the size of the plot was 40 x 27 feet. Though in the present matter the Reference Court has

deducted 30% amount from the amount which was fixed as initial rate before deducting 30% amount in Land Acquisition Reference No.852/2002, in the present matter, the Reference Court has considered the other circumstances like the present land was not touching the National Highway and it was much inside of the National Highway, and the land which was touching National Highway was Gat No.412. Considering the area of that land and the distance between National highway and the present acquired land, some negative factors ought to have been considered by the Reference Court, but those factors are not considered. It was submitted for the acquiring body that the decision of Reference Court given in Land Acquisition Reference No.852/2002 is under challenge and appeal is still pending in this Court. Though it appears that, the compensation amount deposited in respect of the compensation awarded in Land Acquisition Reference No.852/2002 is allowed to be withdrawn by the Civil Court, this Court holds that, the said circumstance cannot be considered in favour of the present claimants. The learned counsel for the acquiring body submitted that, the acquiring body was not party respondent in the said proceedings and it appears that, the State did not oppose the withdrawal seriously.

3. Learned counsel for the acquiring body also submitted that in such cases, after withdrawing the amount the claimants are

not turning up to co-operate for hearing of the appeal and if the appeal is decided in favour of acquiring body, there will be complications, and acquiring body will not be in a position to recover the amount which will be paid in excess than the entitlement of the owners. Considering all these possibilities, this Court holds that 50% of the amount awarded can be allowed to be withdrawn in both the Civil Applications subject to some conditions.

4. In the result, following order is passed :

5. Both the Civil Applications are partly allowed. Out of the total amount deposited with the Court, 50% amount is allowed to be withdrawn. Out of that 50% amount, one half of the amount is to be given on taking undertaking of the claimant and the remaining one half of the aforesaid 50% amount is to be given on furnishing Bank guarantee or solvent surety of that amount.

6. In those terms, the Civil Applications are partly allowed and disposed of.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/