

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

**1063 CIVIL APPLICATION NO.12318 OF 2019
IN FA/3689/2017**

**SARUBAI RAMNATH SHELKE
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

...
Advocate for Applicant : Mr. Wayal Vitthal B
AGP for Respondents/State : Mr. R.B. Bagul
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11th OCTOBER, 2019.

ORDER :

. Present application has been filed for allowing the applicant to withdraw the amount by giving certain directions to the learned Registrar.

2. The present applicant had filed Land Acquisition Reference No.69 of 2013 which came to be partly allowed by the learned reference Court by its judgment and order dated 30.03.2015. The appeal has been preferred challenging the said judgment and decree. Along with the appeal the application for stay to the impugned judgment and order has been filed. This Court had directed the appellant to deposit the entire decretal amount. The acquiring body had deposited amount in all 23 matters to the

tune of Rs.10,12,67,844/-. Out of that, the amount which could have been deposited in respect of the present appeal/application was Rs.3,34,483/-. However, it is stated that inadvertently it is shown that amount of Rs.33,44,483/- is deposited in this matter. Thereafter, by filing Civil Application No.8014 of 2018, the present applicant sought withdrawal of the compensation amount and this Court by its order dated 27.06.2018 had permitted the applicant to withdraw 50% of the amount deposited and further 50% to be withdrawn by furnishing solvent surety to the satisfaction of the learned Registrar of this Court. When she approached learned Registrar, at that time, the said mistake has been realised and it is noted that an excess amount of Rs.30,10,000/- has been deposited. Now, the learned Registrar is not allowing her to withdraw the amount which is due in her matter. Hence, this application.

3. Heard both sides. Learned AGP conceded to the fact that inadvertently excess amount has been deposited in the present matter.

4. It is to be noted from the documents produced along with the application that as per the orders passed by this Court a collective cheque in respect of compensation to be given in group of matters, has been given and it is along with the list. The list prescribes in each matter which is the

compensation amount. In that list, as regards the present applicant is concerned, it is stated that Rs.33,44,483/- is the amount which is deposited. But then thereafter it appears that on 06.05.2019, the Sub Divisional Officer cum Special land Acquisition Officer, Vaijapur has given letter to the learned Registrar of this Court that excess amount of Rs.30,10,000/- has been deposited in this matter. Important point to be noted is that when this Court had passed the order allowing the applicant to withdraw the amount in Civil Application No.8014 of 2018, the said mistake was not pointed out on behalf of the Government. When the excess amount is stated to be in lakhs of rupees, it cannot be said that it is merely an inadvertent mistake of the concerned officer. The concerned officer was duty bound to calculate the decretal amount and then get the amount sanctioned from the Government and then deposit it with the Court for its further disbursement to the competent person. Such job involves responsibility and with that full responsibility, it is expected that the said officer would work. Merely by saying and by giving an application to the learned Registrar stating that excess amount has been deposited and it should be refunded, the job of the concerned officer will not be over. In spite of realising that the excess amount has been deposited, no application has been filed in that matter for withdrawing or refund of the said amount

on behalf of the State Government and further orders have not been passed. It is only the applicant who is seeking directions in this respect because her right is affected thereby. Under such circumstance, apart from permitting the said direction it is necessary to give directions to the superior officer of the concerned department to make an enquiry as to how excess amount could have been deposited. The said excessive amount is in fact a public money and the Government Officers who are the custodians of the same have not acted as per their duty. Hence, following order :-

ORDER

- i) The applicant is allowed to withdraw 50% of the amount of Rs.3,34,483/- as permitted by this Court by order dated 27.06.2018 and in respect of rest of 50%, she is allowed to give surety bond as well as undertaking.
- ii) The learned Registrar to refund/return the excess amount of Rs.30,10,000/- to respondent No.1 with making further communication to the higher officer of the concerned department who had deposited the amount of Rs.33,44,483/- by letter dated 18.06.2018 and 19.06.2018 to take appropriate action against the erring officer as per rules.
- iii) Applicant shall file an undertaking within a period of eight weeks that she would make the said amount good, if directed

at the time of final disposal of the appeal.

iv) Civil Application stands disposed of accordingly.

(SMT. VIBHA KANKANWADI, J.)

SCM