

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

WRIT PETITION NO.8483 OF 2018

RUPCHAND LAXMAN MANG DIED LRS SUPDU RUPCHAND BHALERAO
AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioners : Shri H.B.Nandagavale h/f Shri Sakolkar
Vijay G.

AGP for the Respondents/ State : Shri N.T.Bhagat

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th February, 2020

Per Court:

1 The petitioners are aggrieved by the order dated 07.08.2009 by which, the Executing Court has passed an order in Regular Darkhast No.203/2009, which reads as under :-

"The amount of Rs.9,61,837/- (Rupees nine lacs sixty one thousand eight hundred thirty seven only) be paid to the D.H. namely, (1) Supadu Rupchand Bhalerav and (2) Mirabai Babu Bagul, who are the legal heirs of Rupchand Mang, after obtaining bank guarantee from the D.Hs. in the like amount, on proper identification and due verification.

The excess amount of Rs.3,366/- (Rupees three thousand three hundred sixty six only) be returned to the S.L.A.O., Jalgaon."

2 This matter was considered on 18.02.2020 and as the learned

advocate for the petitioner and the learned AGP desired to take some instructions, this matter was posted today for passing orders. There is no dispute that the amount, which is to be withdrawn by the petitioner, is towards compensation in view of the acquisition of land for a public project.

3 The learned advocate for the petitioners submits that the petitioners are not aware as to whether, the grant of compensation to the petitioners has been subjected to a First Appeal in this Court. The learned AGP submits, on instructions received from the Special Land Acquisition Officer, Jalgaon vide communication dated 20.02.2020, that the State has not filed any First Appeal and as such, there is no challenge to the grant of the compensation amount. The communication dated 20.02.2020 is taken on record and marked as "X" for identification.

4 It is settled law that if there is a challenge to the grant of compensation through a First Appeal and no relief is granted to the appellant, a direction to tender a bank guarantee to the decree holder is not required.

5 In view of the above, this Writ Petition is allowed. The impugned order dated 07.08.2009 is modified only to the extent of converting the bank guarantee into an undertaking to be tendered by the decree holders that if, on account of any pending proceeding, the petitioners are held to be disentitled for any amount or any portion

thereof, they shall return such amount by redepositing the same in the same Court or before the Special Land Acquisition Officer, within twelve weeks from the date of such adverse order, failing which, such amount will carry interest at the rate of 3% per annum from the date of the adverse order.

kps

(RAVINDRA V. GHUGE, J.)