

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.3603 OF 2020
IN FIRST APPEAL [STAMP] NO.12096 OF 2019

...
NARAYAN DNYANOBA VEER [DIED]
THROUGH L.Rs. KAMAL NARAYAN VEER & ANOTHER
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

...
Mr.Ajeet B.Kale, Advocate for the applicants
– claimants
Mr.P.M.Kulkarni, AGP for the respondent-State
Mr.S.C.Arora, Advocate for the appellant –
acquiring body.

...
CORAM : V.L.ACHLIYA,J.
DATE : 15.12.2020

P.C.

1] The applicants – claimants have moved this application seeking withdrawal of the amount deposited by the appellant – acquiring body.

2] Heard learned counsel for the applicants – claimants and advocate representing the appellant – acquiring body.

3] In brief, it is the contention of the learned counsel for the applicants – claimants that appeal preferred is devoid of merits. It is submitted that the Reference

Court has enhanced the compensation based upon the evidence adduced in the case. In connected Appeals arising out of the same acquisition, this Court has allowed the withdrawal of the amount to the extent of 60% of the amount deposited. Out of 60% amount allowed to be withdrawn, the amount to the extent of 40% directed to be paid on furnishing undertaking and 20% on furnishing solvent surety. It is submitted that order on same terms may be passed in favour of the applicants.

4] On the other hand, learned counsel for the appellant-acquiring body submits that the appellant has good case to succeed in appeal. It is submitted that the enhancement of compensation is about 8 to 9 times the compensation awarded by the SLAO. So also the interest has been awarded from the date of possession/notification which is contrary to Full Bench decision of this Court in the case of *State of Maharashtra Vs. Kailash Shiva Rangari* reported in 2016 [3] *Mh.L.J.* 457. It is submitted that the appellant has good case to succeed in appeal. In case the award is set aside or modified, it will be difficult to recover the amount.

5] On due consideration of the submissions advanced in the light of challenge raised, I am of the view that the applicants-claimants be permitted to withdraw the amount to the extent of 50% on furnishing undertaking. The conditional order to allow the withdrawal on furnishing solvent surety may not be desirable. Therefore, I am of the view that the withdrawal of amount to the extent of 60% of amount deposited be permitted to applicants. Hence the following order :

ORDER

i] The application is partly allowed.

ii] The applicants-claimants are permitted to withdraw the amount to the extent of 50% of the amount deposited on furnishing undertaking to the satisfaction of the Registrar [Judicial] with condition that in the event the award is set aside or modified, the applicants - claimants shall re-deposit the amount within eight [8] weeks from the date of passing of order of this Court.

iii] The withdrawal of the amount shall be subject to final outcome of the Appeal.

iv] After making payment to the extent of 50%, the balance amount be invested in Fixed Deposit with any Nationalized Bank till further orders from this Court or disposal of appeal whichever is earlier.

v] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC