

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 CIVIL APPLICATION NO.5187 OF 2020
IN
FIRST APPEAL NO.764 OF 2020

KADU JANGALU BORSE (DECEASED)
THROUGH ITS LEGAL HEIRS
1. SHIVAJI KADU BORSE AND OTHERS
VERSUS
THE EX. ENGINEER, WAGHUR PROJECT JALGAON AND
ORS

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Mr.V.B. Patil, Advocate for the applicants.
Mr.S.D. Dhongade, Advocate for Respondents
Mr.S.Y. Mahajan, AGP for the State.

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CORAM: V.L. ACHLIYA,J.
DATE : 04.09.2020

ORAL ORDER:

The applicants-claimants have moved this application seeking withdrawal of amount deposited by the acquiring body towards acquisition of land of the applicants admeasuring 2 H 17 R for extension of Gaothan.

2. Heard learned counsel for the applicants-claimants and Advocate representing the appellants. Perused the judgment and award passed by the Trial Court.

3. Learned counsel for the appellants opposed the application seeking withdrawal of amount with contention that the appellants have good case to succeed in appeal. The compensation awarded @ Rs.1,43,000/- per hector by the S.L.A.O. has been enhanced to Rs.42,00,000/- per hector by virtue of the award passed by Reference Court. It is submitted that the lands in question are agricultural land. Sale instance considered by the Reference Court cannot be treated as comparable sale instance. For the purpose of determination of market value of the land, the sale instance must be of comparable sale instance of same quality and quantity. The sale instance of small part of land cannot be considered as comparable sale instance for determining the compensation. He further submits that the compensation awarded on the basis of Rs.420/- per sq. mtrs not only excessive but same is not sustainable in law.

4. On the other hand learned counsel for the applicants submits that the award passed by the Tribunal is well reasoned and passed upon due appreciation of evidence. It is submitted that the Trial Court has considered the decision of this Court in

connected matters in determining the compensation @ Rs.600/- per sq. mtrs in respect of land similarly placed. In that view, there is no merit in appeal. He further submits that earlier appeals filed by the acquiring body arising out of same acquisition were withdrawn. It is the contention of the learned counsel for the appellants that the deposit of amount is extent of 75% of compensation awarded by the Trial Court and therefore, the applicants be permitted to withdraw the entire amount.

5. Mr.Dhongade, learned counsel for the appellants submits that the acquiring body was not made party before the Reference Court and due to this reason appeals were withdrawn. Subsequently, the Divisional Commissioner, Nashik has taken decision in the matter to file appeal by the State Government.

6. On due consideration of submissions advanced I am of the view, there is arguable case to be considered in appeal. The compensation awarded by the S.L.A.O. @ Rs.1,43,000/- per hector has been enhanced by the Reference Court to Rs.42,00,000/- per

hector which is about 40 times the compensation awarded by S.L.A.O. The lands in questions are agricultural lands. The compensation has been awarded by treating the land as having non-agricultural potentials. In that view, the interest of the appellants required to be safeguarded while passing the order of withdrawal of amount. Hence the following order :-

ORDER

(i) The applicants are permitted to withdraw the amount to the extent of 40% of the amount deposited by the appellants – acquiring body on furnishing written undertaking to the effect that, in case the award is set aside or modified, they shall redeposit the amount within eight weeks from the date of order.

(ii) After making payment to the extent of 40% of amount deposited, the remaining amount be invested in fixed deposit with any Nationalized Bank initially for a period of three years with standing instructions to renew the same till further orders from the Court or disposal of appeal whichever earlier.

(iii) The payment of amount shall be

subject to outcome of the appeal.

(iv) Amount permitted to be withdrawn be paid to individual claimants by transferring the amount in their respective Savings Bank Accounts.

(v) No amount in terms of order to be made to the power of attorney holder of the claimants.

(vi) Civil Application is disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

SGA