

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

913 CIVIL APPLICATION NO.7417 OF 2020
IN
FA/1274/2017

AMAR DATTATRAYA PATIL
VERSUS
STATE OF MAHARASHTRA AND ORS

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Mr. D.D.Sarwade Patil, Advocate for Applicant.
Mr. P.M.Kulkarni, A.G.P. for State.
Mrs. Kalpalata Patil, Advocate for R – 3.

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CORAM : V.L.ACHLIYA, J.
DATE : 16/12/2020

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ORAL ORDER :

1. The applicant has moved this application seeking withdrawal of balance amount of 50% of compensation deposited.
2. Heard learned counsel for applicant and counsel representing the acquiring body.
3. In brief, it is the contention of learned counsel for applicant that Appeal filed is devoid of merit. The Reference Court has passed reasoned order supporting the enhancement of compensation @ Rs. 15,000/- per R. It is submitted that conditional stay granted to the execution of Award vacated by this Court on failure to deposit the amount by appellant within stipulated period. The amount to the extent of

50% deposited with the Reference Court has been withdrawn by the applicant. Now, the applicant is seeking withdrawal of balance 50% amount deposited by appellant/acquiring body.

4. Learned counsel submits that in some of the Appeals arising out of same acquisition this Court has allowed withdrawal of amount to the extent of 100% [i.e. 50% on undertaking and 50% on furnishing solvent surety]. In some other Appeals arising out of same acquisition this Court has allowed the withdrawal to the extent of 75% [i.e. 50% on undertaking and 25% on furnishing solvent surety].

5. In counter to the submissions advanced, learned counsel for acquiring body submits that the enhancement of compensation is without any evidence adduced on the part of claimant. The enhancement of compensation is about 15 to 20 times the compensation assessed by the Special Land Acquisition Officer. It is submitted that Special Land Acquisition Officer has assessed the compensation in the range of Rs. 770/- to Rs. 1725/- per R. which has been enhanced to Rs. 15,000/- per R. based upon the decision in L.A.R. No. 1006/2010 which is under challenge before this Court. It is submitted that Appeal against the Judgment and Award passed in L.A.R. No. 1006/2010 has been admitted by this Court. The appellants have good case to succeed in

Appeal. In case the applicant is permitted to withdraw the amount, it would be difficult to recover the amount. It is further submitted that this Court [CORAM : V.V.KANKANWADI, J.] has rejected the Civil Application No. 7332 of 2019 filed in First Appeal No. 1280 of 2017 along with two other matters arising out of same acquisition vide order dated 06/09/2019.

6. On due consideration of submissions advanced, I am of the view the Appeal raises arguable case. The lands were acquired for percolation tank. The Special Land Acquisition Officer has assessed the compensation based upon classification of lands in the range and awarded compensation in the range of Rs. 770/- per R. to Rs. 1775/- per R. By the impugned Judgment and Order passed by Reference Court, the compensation has been assessed by treating the lands are having non agriculture potential and enhanced the compensation @ Rs. 15,000/- per R. In that view, the enhancement of compensation is 10 to 20 times the compensation assessed by the Reference Court. The applicant has already withdrawn the amount to the extent of 50% of compensation awarded by the Reference Court. In view of the arguable case to be considered in Appeal, it is not desirable to permit the applicant to withdraw the balance amount of 50% pf Award passed by Reference Court. Withdrawal of entire amount would make the very purpose of filing of Appeal infructuous.

If the Award is set aside or modified, it will be difficult to recover the amount. I am, therefore, not inclined to entertain the application. Accordingly, the application is rejected. Hearing of Appeal is expedited.

7. List the Appeal along with connected Appeals for final hearing in the week commencing w.e.f. 08/03/2021.

[V.L.ACHLIYA]
JUDGE

KNP