

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 2432 OF 2021
IN
FIRST APPEAL NO. 3913 OF 2019
IN
L.A.R. NO. 49 OF 2006

Patilbuwa Tulsiram Mote **Died**

Through his Lrs

Popat Patilbuwa Mote

...Applicant

Versus

The Executive Engineer,

[Minor Irrigation] Division,

Through Lift Irrigation Division,

Osmanabad and Ors.

...Respondents

Mr S.A. Wakure, Advocate for applicant

Mr R.C. Patil, Advocate for Respondent No. 1

Mr Y.G. Gujrathi, AGP for Respondent Nos. 2 and 3 – State

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 1st JULY, 2021

PER COURT :

1. It is an application for withdrawal of amount moved by applicant/original claimant.

2. Heard Mr Sanjay Wakure, learned counsel for the applicant/original claimant, Mr Ruturaj Patil, learned counsel appearing for respondent No.1/acquiring body and Mr Wattamwar, learned A.G.P. for respondent Nos. 2 and 3-State.

3. Perused the impugned judgment and award passed in LAR No. 49/2006 by the reference court dated 15th October, 2013. Mr Ruturaj Patil,

learned counsel for acquiring body invited my attention to para Nos. 10 and 11 of the impugned judgment and points out that though learned reference court has held that acquired land was jirayat land, still awarded the compensation by deducting only 33 % which is improper and incorrect having regard to the decision of the Apex Court. The deduction ought to have been 50 %. Mr Patil further invited my attention to the operative part of the order of the impugned judgment and points out that the reference court has awarded 9 % interest per annum for the first time from the date of notification under section 4 of the Act which is contrary to the full bench decision of this Court.

4. By taking help of the above said material, Mr Patil submits that only 50 % withdrawal may be permitted.

5. On the other hand, Mr Wakure, learned counsel for the applicant submits that applicant is entitled to get the entire amount of compensation in view of the facts of the case on hand.

6. Having regard to the submissions of the learned counsel for both the sides, I am of the view to allow the applicant/original claimant to withdraw the amount to the extent of 60 % of the amount deposited by the acquiring body, which would meet the ends of justice.

7. The points raised by Mr Patil, learned counsel for acquiring body would be certainly taken into account at the time of final hearing of the appeal. Hence, I proceed to pass the following order :-

ORDER

- (i) The applicant is permitted to withdraw 60 % of the amount deposited by the acquiring body in this court on furnishing usual undertaking with the Registry.
- (ii) The civil application is allowed and disposed of accordingly.

[SHRIKANT D. KULKARNI, J.]

mta