

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

**922 CIVIL APPLICATION NO.2752 OF 2020
IN FA/1083/2019**

**SHIVMURTI MAHADAPPA TIKAMBARE THR LRS
BHAGIRATHBAI
VERSUS
THE STATE OF MAHARASHTRA**

Mr. M. L. Dharashive, Advocate for the applicant
Mr. A. A. Jagatkar, AGP for the respondent/State

CORAM : V. L. ACHLIYA, J.

DATE : 20-01-2021

P. C.

. The applicant/claimant has moved this application seeking withdrawal of amount deposited by the appellant acquiring body.

2. Heard learned counsel for the applicant/claimant and the learned AGP representing the appellant.

3. Mr. Jagatkar, AGP opposed the application with contention that the enhancement of compensation by the reference court is not sustainable in law. It is submitted that the compensation awarded by the Special Land Acquisition Officer @ Rs. 155/- per R has been enhanced to Rs. 2,500/- per R i.e. more than fifteen times the compensation assessed by the Special Land

Acquisition Officer. It is further submitted that for the purpose of enhancement of compensation the reference court has relied upon the sale instance of small piece of land adm. 20-R i.e. purchased for commercial use. The land acquired was an agricultural land. It is situated far away from the main road. While assessing the compensation the reference court also not considered the deduction to be made towards development of the land if converted for non-agricultural use. So also, the interest has been awarded from the date of notification/ possession of land which is contrary to the 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*.

4. On the other hand learned counsel for the applicant/claimant supports the judgment and award passed by the reference court. It is submitted that the applicant is waiting from the last 20 years to receive the compensation of land acquired for public purpose. The land in question was acquired for rehabilitation of earthquake affected person. In that view, the approach of the reference court to determine the compensation by keeping in mind the non-agriculture use of the land cannot said to be perverse. It is further submitted that the husband of the applicant died during the pendency of appeal. The applicant is about 70 years of age. It is her legitimate expectation to receive the compensation during her life time and urged to allow applicant to withdraw the entire amount deposited by the acquiring body.

5. On due consideration of the submissions advanced and challenge raised in the appeal, I am of the view that the application deserves to be partly allowed. It is not disputed fact that the land has been acquired for rehabilitation of earthquake affected persons and used for residential use. The acquisition of land for rehabilitation itself sufficient to draw inference that the land in question suitable for residential use and it had non agriculture potential. In that view the approach of the reference court to determine the compensation by considering its use for non-agriculture purpose was based upon evidence adduced in the case. However, it appears that while determining the compensation the reference court has not considered the deduction to be made on account of development of agriculture land into non-agriculture use. So also, the enhancement is more than fifteen times the compensation assessed by the Special Land Acquisition Officer.

6. Considering the challenge raised in the appeal, I am of the view the order in following terms would meet ends of justice:

ORDER

- i. The applicant is permitted to withdraw the amount to the extent of 60% deposited amount on furnishing undertaking to the satisfaction of the Registrar (Judicial) with condition that in the event the award is set aside or modified the applicant shall re-deposit the amount within eight weeks from the date of such order.

- ii. After making payment to the extent of 60% of amount deposited, the balance amount shall be invested in fixed deposit in any nationalized bank initially for a period of two years with standing instructions to renew the investment till further orders from this court.
- iii. The amount be paid by transferring the amount in the savings bank account as per the particulars of account to be furnished by the applicant.
- iv. No amount to be paid to the person other than the applicant including the power of attorney holder of applicant.
- v. Withdrawal of amount shall be subject to final outcome of the appeal.
- vi. The application is disposed of in above terms.

[V. L. ACHLIYA, J.]