

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

**14 CIVIL APPLICATION NO.1584 OF 2021
IN FA/635/2019**

EXECUTIVE ENGINEER, M.I.W. JALGAON
VERSUS
SUBHADRAIBAI ESHRAM SURWADE (DIED) DECEASED LRS
CHINDHU AND ORS

...
Advocate for Applicant : Ms. Kutti Choudhary Chaitali R.
AGP for Respondents/State : Mr. N.T. Bhagat
Advocate for Respondent Nos.1 to 3 : Mr. A.B. Kale

**WITH
CIVIL APPLICATION NO.5702 OF 2020
IN FA/635/2019**

SUBHADRAIBAI ESHRAM SURWADE (DIED) DECEASED LRS
CHINDHU AND ORS
VERSUS
EXECUTIVE ENGINEER, M.I.W. JALGAON

...
Advocate for Applicant : Mr. A.B. Kale
APP for Respondents/State : Mr. N.T. Bhagat
Advocate for Respondent No.1 : Ms. Kutti Choudhary Chaitali R.
...

**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 01st February, 2021**

PER COURT:-

1. Civil Application No.5702 of 2020 has been filed by the original respondent to withdraw rest of the amount with interest and Civil Application No.1584 of 2021 has been filed by the original appellant for recall of order passed by this Court on 22.01.2021.

2. First Appeal No.635 of 2019 has been filed by the acquiring body challenging the judgment and award passed on 14.07.2017 by the learned Civil Judge Senior Division, Jalgaon

in Land Acquisition Reference No.218 of 2012. In pursuance to the order passed by this Court on the stay application, it appears that the appellant-acquiring body deposited amount of Rs.1,52,47,804/-. Thereafter, when it was pointed out that an amount of Rs.12,94,403/- is outstanding, further amount has been deposited and reference can be made to the order passed by this Court on 04.10.2019, wherein it has been stated that the amount deposited by the acquiring body is to the tune of Rs.1,65,42,207/-. On that day while deciding Civil Application No.6745 of 2019, this Court directed applicant nos. 1 to 3 to withdraw amount of Rs.25,00,000/- each and accordingly, it appears that the amount has been withdrawn. Thereafter, the appeal came to be admitted on 13.01.2021. Thereafter, it can be seen that by Application No.5702 of 2020, the applicants are praying that they be allowed to withdraw rest of the amount. By order dated 02.11.2020, it was directed that the matter be placed before this bench.

3. Thereafter, when the matter was before this Court on 11.12.2020, Advocate Mr. Randhir, who was holding for Advocate Mrs. Chaitali R. Kutti Choudhary requested for accommodation and accordingly, the accommodation was granted. Thereafter on 17.12.2020, again she was absent. Learned Advocate for the applicant was directed to issue written request informing her about the next date on which her presence is solicited and then the matter was adjourned to

22.01.2021. On 22.01.2021, she was again absent. In Civil Application No.1584 of 2021, it is stated that she was present before Court No.1 on that day and after she got the knowledge about the passing up of the order, she says that she had rushed to the Court hall of this Court, but by that time i.e. 04.15 pm, the Court's work was over. There appears to be an attempt to meet this Court in chamber but then that was not allowed and therefore, she is praying that the order passed by this Court on 22.01.2021 be recalled.

4. Heard learned Advocate Mrs. Chaitali R. Kutti Choudhary appearing for the applicant and learned Advocate Mr. Ajit Kale appearing for respondent nos.1 to 3 as well as learned APP Mr. Bhagat appearing for respondent nos. 4 and 5.

5. Firstly, as regards Civil Application No.1584 of 2021 is concerned, it can be said that when already this Court had allowed to withdraw substantial amount to the claimants, this Court was of the view that the Advocate representing the appellant-acquiring body should be heard and therefore, every opportunity was given to Mrs. Kutti to appear before the Court and place before the Court the case of the corporation. But it can be seen from the above orders, that every opportunity therefore was given and even the learned Advocate for the applicant was directed to issue written request informing Mrs. Kutti about the next date. She did not make any arrangement to make a mention about her presence in another Court on

22.01.2021 and therefore, instead of directing the applicant to issue one more written request to her, the office was directed to issue notice to her, she should not feel it offending. It was in fact the communication of the Court to the concerned Advocate and it was an opportunity to her to remain present. Naturally, after so many opportunities were given, she had not appeared and therefore, it was stated that her failure would be viewed seriously and the absence would be then informed to the higher authorities of respondent no.1. Now she has appeared and represented the corporation effectively. Under such circumstance, in fact there is no necessity to recall that order, her presence was necessary and now she has made herself available before this Court.

6. Now as regards the withdrawal application is concerned, as aforesaid, the amount of Rs.1,65,42,207/- has been deposited and out of that, amount of Rs.75,00,000/- have been allowed to be withdrawn, which is definitely a substantial amount. Further, it can be seen that the award itself is challenged that means the rate that has been given by the reference Court, has been challenged and therefore, entire amount cannot be definitely allowed to be withdrawn. The learned Advocate for the original claimants is relying upon the settlement between the corporation and some other claimants, whose land is stated to be acquired for the same project and it is stated that some higher amount was granted and this fact

was not brought to the notice. According to the learned Advocate for the original claimants, the said settlement deed is binding on the appellant-corporation. These are the points which are required to be considered at the time of final hearing of the first appeal. Firstly, the first appeal assignment is not with this bench as on today. Secondly, with whom the acquiring body should enter into a compromise would be the lookout of the acquiring body. It would be for this Court specially the bench, who would be dealing with the first appeal to take into consideration whether the said settlement would be binding on the corporation and then to have its effect on the first appeal. Therefore, now when substantial amount was allowed to be withdrawn by the applicants, some amount should be kept with this Court to protect the interest of the acquiring body also and therefore, entire amount cannot be allowed to be withdrawn. Therefore, there is no merit in Civil Application No.5702 of 2020. It deserves to be rejected and is accordingly rejected. Now as regards another application in concerned, the purpose is served and therefore, the said order is recalled. Civil Application No.1584 of 2021 stands allowed.

(SMT. VIBHA KANKANWADI, J.)