

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

**CIVIL APPLICATION NO. 4757 OF 2021
IN
FIRST APPEAL (STAMP) NO. 9103 OF 2019**

Sayed Mumtaz Hussain S/o
Sayed Mazhar Hussain
(Died through Legal heirs)
and another

... Applicants

Versus

The Executive Engineer
Sinchan, Zilla Parishad, Aurangabad
and another

... Respondents

....

Mr. M.P. Kale, Advocate for the Applicants.
Mr. D.B. Pawar, Advocate for Respondent No.1
Mr. S.S. Dande, AGP for Respondent No.2 / State

....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 03rd JULY, 2021

PER COURT:-

1. It is an application for withdrawal of amount moved by the applicants / original claimants.

2. Heard Mr. M.P. Kale, learned counsel for the applicants / original claimants, Mr. D.B. Pawar, learned counsel appearing for respondent No.1 / acquiring body and Mr. S.S. Dande, learned AGP for respondent No.2 / State. Perused the earlier order passed by this Court (Coram : V.L.Achliya, J.) dated 04.04.2019

3. As per the order passed by this Court dated 04.04.2019, the acquiring body has deposited 50% amount of the compensation in this Court. The applicants are seeking withdrawal of that amount entirely.

4. Mr. Kale, learned counsel for the applicants submits that the applicants are entitled to withdraw the entire amount deposited by the acquiring body in view of the fact that the acquiring body has deposited only 50% amount of the compensation. Whatever the points raised by the appellant would be considered at the time of final hearing of the appeal. It is an old land acquisition proceedings and applicants are entitled to get the amount of compensation.

5. Mr. D.B. Pawar, learned counsel for the acquiring body submits that the applicants may be permitted to withdraw the amount to the extent of 10% and not more than that. Mr. Pawar, learned counsel for the acquiring body invited my attention to the impugned judgment and award passed by the Reference Court in L.A.R. No.304/2000, more particularly, the operative part, clause no.4. He submits that the Reference Court has awarded the compensation contrary to the decision of the Apex Court. The Reference Court has awarded the compensation in respect of land as well as fruit bearing trees, which is contrary to the decision of the Apex Court and that fact needs to be taken into consideration while allowing the prayer of withdrawal.

6. Having regard to the submissions of both the sides, it is a matter of record that the acquiring body has deposited only 50% amount of the compensation awarded by the Reference Court. Whatever the meritorious contentions raised by Mr. Pawar, learned counsel for the acquiring body would be taken care of in view of remaining 50% amount withheld, which is to be deposited as per the award. As such, I am of the view that the applicants need to be allowed to withdraw the entire amount of compensation deposited by the acquiring body in this Court. Hence, the following order is passed:

ORDER

- (i) The application moved by the applicants for withdrawal of amount is hereby allowed.
- (ii) The applicants are permitted to withdraw the entire amount (50% of the compensation amount awarded by the Reference Court) on furnishing usual undertaking with the Registry of this Court and to the satisfaction of the Registrar (Judicial).
- (iii) The application stands disposed of accordingly.

(**SHRIKANT D. KULKARNI**)
JUDGE

S.P Rane