

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5280 OF 2021  
IN  
FIRST APPEAL ST.NO. 11716 OF 2020

Namdeo Babu Sarode  
(deceased) through L.Rs.  
Tulsabai Namdeo Sarode and ors.

.. Applicants

Versus

The Executive Engineer,  
Maharashtra Industrial Development  
Corporation, Jalgaon and anr.

..Respondents

Mr V.B. Patil, Advocate for applicants  
Mrs M.S. Mhase, Advocate i/b Jay & Co. for respondent no.1  
Mr Y.G. Gujrathi, A.G.P. for respondent no.2

**CORAM : SHRIKANT D. KULKARNI, J.**

**DATE : 1<sup>st</sup> JULY, 2021**

**PER COURT :**

1. It is an application filed by the applicants for withdrawal of amount with interest deposited by respondent no.1 in F.A. Stamp no. 11716 of 2020.
2. Heard Mr V.B. Patil, learned Counsel for the applicants and Mrs M.S. Mhase, learned Counsel for respondent no.1/acquiring body and learned A.G.P. for respondent no.2.
3. Mr Patil, learned Counsel for the applicants seeks withdrawal of entire amount with bifurcation that 50% withdrawal without any condition and 50% withdrawal on the basis of usual undertaking by placing reliance on the order of the Apex Court in C.A.No. 807/2013 (Special Leave Petition C.No. 4850/2013) and other matters.

4. Mr Patil further submits that this Court has adopted the practice to allow withdrawal upto 75% by making bifurcation of 50% on usual undertaking and remaining 25% on furnishing solvent surety. He submits that same decision needs to be taken in this regard having regard to the facts of the case on hand.

5. On the other hand, Mrs Mhase, learned Counsel for respondent no.1 strongly opposed to allow withdrawal of 100% of the compensation. She points out the order dated 14.8.2020, passed by this Court in C.A. No.4507/2020 in F.A. No.837/2020 with connected matters (Coram : V.L. Achliya, J.). By placing reliance on above order of this Court, she submits that at the most, applicants may be allowed to withdraw 50% of the amount deposited by the acquiring body and not more than that.

6. I have considered the submissions of the learned Counsel for both the sides and also perused the orders passed by the Apex Court in C.A. No.807/2013 as well as order passed in No.4507/2020 in F.A. No.837/2020 with connected matter dated 14.8.2020.

7. On going through the copy of the order of the Apex Court relied upon by Mr Patil, it is noticed by me that it is not anyway connected to this appeal. It is not arising out of same acquisition proceeding or the award passed by the reference Court. It is in different proceeding. He has placed on record the same, just for guidance of this Court for passing order of withdrawal.

8. I have also gone through the order dated 14.8.2020, passed by my brother (Coram : V.L. Achliya, J.) in C.A. No.4507/2020 in F.A. No.837/2020 with connected matters, relied upon by Mrs Mhase, learned

Counsel for respondent no.1/ acquiring body. On perusing the same, it is noticed by me that this Court was pleased to permit the applicants to withdraw the amount to the extent of 50% of the amount deposited by the acquiring body on furnishing personal undertaking to the satisfaction of the Registrar (Judicial) of this Court to that effect.

9. Mrs Mhase, learned Counsel for respondent no.1 fairly submits that the said order is from the same project though not arising out of same award passed by the reference Court. But, it is from the same project.

10. Having considered the submissions of the learned Counsel for both the sides and in order to protect interest of both the sides, I am of the considered view that if applicants are allowed to withdraw the amount to the extent of 75%, it would meet the ends of justice. Out of that, 50% withdrawal on usual undertaking and 25% on furnishing solvent surety/security to the satisfaction of the Registrar (Judicial). Remaining 25% amount deposited by the acquiring body may be invested in a fixed deposit in any Nationalised Bank that would be beneficial for either side after outcome of the appeal.

11. Having regard to the above reasons and discussion, I proceed to pass the following order :

#### ORDER

(i) The applicants are permitted to withdraw 50% of the amount deposited by the acquiring body on furnishing usual undertaking with the Registry.

(ii) The applicants are further permitted to withdraw 25% of the amount deposited by the acquiring body with the Registry on furnishing solvent surety/security and necessary conditions as per the satisfaction of Registrar (Judicial) of this Court.

(iii) The Registrar (Judicial) shall invest remaining 25% of the compensation amount deposited by the acquiring body in a nationalised Bank i.e. State Bank of India, High Court Branch at Aurangabad for appropriate term so that succeeding party may get that amount with interest.

(iv) Civil Application is allowed and disposed of accordingly.

**[ SHRIKANT D. KULKARNI, J. ]**

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