

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

**925 CIVIL APPLICATION NO. 7175 OF 2020
IN FIRST APPEAL NO 695 OF 2020**

**NAGNATH TULSHIRAM RAJGURU
VS
THE GMIDC THR THE EX. ENGINEER MINOR IRRIGATION
DIVISION, OSMANABAD THR GMIDC AND ANR**

Mr. Vivekanand V. Ingale, Advocate for the applicant
Mr. Ranjit B. Gaikwad, Advocate for respondent No. 1
Mr. A. A. Jagatkar, AGP for the respondent/State

CORAM : V. L. ACHLIYA, J.

DATE : 20-01-2021

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. The applicant/claimant has moved this application seeking withdrawal of amount of Rs. 1,72,799/- deposited by the acquiring body.

2. Heard learned counsel for the applicant /claimant and the counsel representing the appellant-acquiring body.

3. In brief, it is the contention of the learned counsel for the appellant that the enhancement of compensation is not legally sustainable in law. It is submitted that the compensation awarded @ Rs. 210/- per R has been enhanced to Rs. 1,000/- per R without any evidence to support such enhancement. The sale instances referred and relied are in respect of transaction taking place after

the issuance of notification under Section 4 of the Land Acquisition Act. The land acquired was dry crop land. However, the reference court has relied upon sale instances in respect of Bagayat land. So also interest to be awarded under Section 28 of the Land Acquisition Act has been awarded from the date of notification, 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. In this background, the learned counsel for the appellant submits that if the applicants are permitted to withdraw the amount the purpose of filing of appeal would be frustrated and it will be difficult to recover the amount if the award is set aside.

5. On the other hand learned counsel for the applicant supports the award passed by the reference court. It is contended that while determining the compensation reference court has deducted the amount to the extent of 1/3rd from the sale instances relied by keeping in mind that the sale instance relied are of the period after notification under Section 4 of the Land Acquisition Act. In this background the learned counsel submits that appeal is devoid of merit.

6. On due consideration of the submissions advanced and the challenge raised in appeal, I am of the view that the order in following terms would meet ends of justice:

ORDER

- i. The application is partly allowed.
- ii. The applicant is permitted to withdraw the amount to the extent of 60% amount deposited on furnishing undertaking to the effect that in the event award is set aside or modified, the applicant shall re-deposit the amount within eight weeks from the date of such order.
- iii. After making the payment the balance amount be invested in fixed deposit initially for a period of two years with standing instructions to renew the same till further order from this court or till disposal of the appeal whichever is earlier.
- iv. The payment of amount shall be subject to outcome of appeal.
- v. The application is disposed of in above terms.

[V. L. ACHLIYA, J.]