

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

**927 CIVIL APPLICATION NO. 7732 OF 2020
IN FIRST APPEAL NO. 3021 OF 2019**

**TATYABA DHONDIBA LANDE (DIED) THR LRS AMBADAS
(DIED) THR LRS NILAWATI AND ORS
VS
THE EX. ENGINEER, MINOR IRRIGATION DIVISION,
OSMANABAD AND ORS**

Mr. Vivekanand V. Ingale, Advocate for the applicants
Mr. V. C. Solshe, Advocate for respondent No.1
Mr. P. M. Kulkarni, AGP for the respondent/State

CORAM : V. L. ACHLIYA, J.

DATE : 20-01-2021

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. The applicants/claimants have moved this application seeking withdrawal of amount of Rs. 1,96,541/- deposited by the acquiring body.

2. Heard learned counsel for the applicants/ claimants, the counsel representing the appellant-acquiring body and the learned AGP.

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. 180/- per R has been enhanced to Rs. 1,250/- per R for

irrigated land and Rs. 625/- per R for non irrigated land without any evidence to justify such enhancement. It is submitted that the sale instances referred and relied by reference court are post notification issued under Section 4 of the Land Acquisition Act. The land in question was Jirayat land. However, sale instances relied for enhancement are in respect of Bagayat land. So also interest 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 the appeal would be frustrated and it will be difficult to recover the amount if the award is set aside or modified by this court.

5. On the other hand learned counsel for the applicants/claimants supports the award passed by the reference court and submits that while determining the compensation the reference court has considered the three sale instances. So also, the amount to the extent of 1/3rd has been deducted by considering the sale instances to be of the period after issuance of 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 applicants are 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.]

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