

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 CIVIL APPLICATION NO.6924 OF 2020
IN FA/2720/2017

DATTU SIDAPPA SUTAR
VERSUS
THE EXECUTIVE ENGINEER, REINFORCEMENT
DIVISION, OMERGA AND ORS

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Mr.R.V. Naiknavare, Advocate for applicant.
Mr.Rahul Tambe, Advocate for respondent No.1
Mr.P.M. Kulkarni, AGP for respondent/State.

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CORAM : V.L.ACHLIYA,J.
DATE : 05.02.2021

P.C.

. The applicant-claimant has moved this application seeking withdrawal of amount deposited by the appellant-acquiring body.

2. Heard learned counsel for the applicant-claimant and counsel representing the appellant-acquiring body. Perused the award passed by the Reference Court.

3. In brief, it is the contention of learned counsel for the appellant that the appellant has good case to succeed in appeal. It is submitted that the Special Land Acquisition Officer assessed the compensation

@ Rs.178/- per R which has been enhanced to Rs.1850/- per R without legally sustainable evidence of similarly situated land on and before notification U/Sec. 4 tendered in evidence. It is submitted that the sale instance relied by the Reference Court is of post notification U/Sec. 4 of the said Act. Although the sale instances of the period on and before notification U/Sec. 4 were available, the claimant has not produced the same in evidence. There are no observations in the judgment and award passed that the sale instances are of period prior to notification were not available. It is further submitted that the Reference Court erred in awarding the interest U/Sec. 28 of the Land Acquisition Act from the date of possession which is contrary to the Full Bench decision in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** reported in ***2016(3) Mh.L.J. 457***. In this background, learned counsel for the appellant submits that the appellant has good case to succeed in appeal. If the applicant-claimant is allowed to withdraw the amount, the purpose of filing of appeal will be frustrated.

4. On the other hand, learned counsel for the applicant-claimant supports the award passed by the Reference Court. It is submitted that as the sale instances of similar situated land prior to date of notification were not available, the sale instance of a similarly situated land post notification U/Sec. 4 was taken into consideration while assessing the compensation. The Reference Court has considered the deduction to the extent of 7 1/2% as to the value of land. In this background, learned counsel submits that appeal filed is devoid of merits.

5. On due consideration of submissions advanced, I am of the view, the appeal raises arguable case which needs to be considered. In that view, the withdrawal of amount to the extent of 60% of amount deposited would meet the ends of justice. Hence the following order :-

ORDER

(i) The application is partly allowed.

(ii) The applicant-claimant is permitted to withdraw the amount to the extent of 60% of

the amount deposited on furnishing written undertaking to the effect that in the event the award is set aside or modified, the shall redeposit the amount within 8 weeks from the date of passing of order.

(iii) The amount be paid to the applicant by transferring the amount in his Saving Bank account on furnishing the particulars of his Bank Account.

(iv) No amount be paid to the person other than claimant including the General Power of Attorney.

(v) Withdrawal of amount shall be subject to final outcome of the appeal.

(vi) The Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

SGA