

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 8068 OF 2020 IN FA/872/2020

GULAB S/O MEHEBOOB @ MAHBUB
MULANI

...APPLICANT

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

..RESPONDENTS

Mr L.C. Patil, Advocate for the applicant;
Mr. S.N. Kendre, AGP for respondent no. 1;
Mr. R.B. Gaikwad, Advocate for respondent no. 3

CORAM : ABHAY AHUJA, J.

DATE : 29-01-2021

P.C.

1. Heard learned counsel for the parties.
2. This is an application whereby the applicant / claimant is seeking to withdraw the amount deposited in this court by the acquiring body, viz. the Godavari Marathwada Irrigation Development Corporation, Osmanabad, pursuant to acquisition of agricultural land of the applicant.
3. The acquiring body has filed First appeal No.872 of 2020 before this court challenging the judgment and common order dated 5th July, 2013, passed by the learned Civil Judge

Senior Division, Osmanabad, in LAR No. 138 of 2012, on the grounds mentioned therein.

4. Learned Counsel for the acquiring body submits that the judgment and common order 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**.

5. It is noted from the record that earlier, this Court, vide order dated 29th January, 2020 has stayed the impugned judgment and award as the entire amount has been deposited in this Court by the acquiring body.

6. On the other hand, the applicant / claimant submits that the appeal filed by the acquiring body is devoid of merit as the impugned order has been passed in accordance with law. It is submitted that the applicant is agriculturist and is in need of funds and, therefore, seeks withdrawal of the entire amount upon the usual terms and conditions.

7. Learned counsel for the acquiring body opposes the application, submitting that only some percentage amount of the said amount may be permitted to be withdrawn and that too, on furnishing of bank guarantee.

8. Learned counsel for the applicant submits that in similar matters, this Court has permitted withdrawal of 75% of the amount on furnishing of undertaking / solvent surety in respect of the amount withdrawn.

9. On consideration of the above submissions and considering that the condition of furnishing of bank guarantee may be difficult and onerous upon the claimant/applicant who is submitted to be agriculturist, withdrawal of the amount to the extent of 70% of the amount deposited be permitted to be withdrawn as under :

i) 50% amount permitted to be withdrawn on furnishing of undertaking to the satisfaction of the Registrar (Judicial) of this Court, to the effect that in the event the judgment and award dated 5th July, 2013 is set aside or modified, he shall re-deposit the same within six weeks from the date of passing of such order by this Court.

ii) The applicant is permitted to withdraw 20% of the amount deposited with this Court on furnishing of solvent surety of the said amount, to the satisfaction of the Registrar (Judicial) of this Court.

iii) Registry is directed to invest the balance amount of 30% in fixed deposit(s) in any nationalized bank for a period of six months and keep re-investing the same from time to time, subject to the orders of this Court or till the final disposal of the appeal.

iv) The amount to be paid to the applicant would be transferred to his savings account on furnishing of the details of his bank account to the Registrar (Judicial) of this Court.

v) Payment of withdrawal is subject to the outcome of the pending appeal.

10. Civil application is disposed of in above terms.

(ABHAY AHUJA)
JUDGE

amj