

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.10141 OF 2021
IN FA/268/2021 WITH CA/12801/2021 IN FA/268/2021

DAULATMAL NATHMAL JAIN AND OTHERS
VERSUS
THE DISTRICT COLLECTOR, JALGAON AND OTHERS

Ms.Sakshi Kale h/f Mr.A.B.Kale, Advocate for the applicants.
(Respondent Nos. 1 to 5 in CA No.12801/2021)
Mr.S.G.Sangle, AGP for respondent Nos. 1 and 2. (Respondent Nos. 6
and 7 in CA No.2801/2021).
Mr.A.S.Shelke, Advocate for respondent No.3 and applicant in CA
No.12801/2021.

(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)

DATE : DECEMBER 1, 2021

PER COURT :

1. We have considered CA No.12801/2021. The First appeal was dismissed on account of non removal of office objections. 20 days delay is caused in filing this civil application.

2. Issue notice to the respondents/non-applicants. The learned Advocate waives service on behalf of non applicant Nos. 1 to 5 and the learned AGP waives service on behalf of 6 and 7.

3. The learned Advocate for the original claimants has strenuously opposed this civil application.

4. For the reasons set out in the application and as the delay is minor, the same is allowed. The first appeal is restored and the order dated 08/10/2021 is recalled on the condition that all office objections shall be removed on or before 21/12/2021. Consequentially CA No.901/2020 also stands restored.

5. Considering that the entire decretal amount, Rs.7,14,56,405/- has been deposited by the appellants, **the First Appeal is Admitted.**

6. The learned Advocate for the claimants has strenuously canvassed the grounds set out in the application for withdrawal of amount. In addition to the same, she points out that the acquiring body had not led any evidence before the LAR Court. The proceedings before the LAR Court are in the nature of original proceedings and oral and documentary evidence has to be led by the parties. Though the acquiring body claims to have the copy of the sale deed dated 13/07/2009, the same was not produced and no evidence was led in

support of the pleadings in the written statement.

7. She further adds that the enhancement is less than 4 times the rate that was granted by the SLAO. However, the enhancement is justified for the reason that the LAR Court was convinced as regards the rate at which the enhancement had to be granted. She further adds that in several matters, this Court has permitted the claimants to withdraw the entire amounts or amounts in between 50% to 75%. She supports the prayer for withdrawal of the entire amount.

8. The learned Advocate for the Acquiring Body submits that the land at issue falls in Gat No.168 at village Pimprala which is about 5 kms.from the Jalgaon City. Acquired land measures 73R. Section 4, Land Acquisition Act, 1894 notification was issued on 10/04/2010. The award was delivered by the SLAO on 26/03/2012. Considering the land to be an agricultural land, the compensation rate was Rs.1025/- per square meter and the total amount withdrawn by the claimants is Rs.53,09,500/-.

9. He submits that the claimants produced a sale deed

No.4373/2009 dated 24/12/2009 with regard to an open plot No.11 admeasuring 139.5 Sq.Mtrs. The sale proceeds are Rs.8,00,000/- and as such the rate would be Rs.5734/- per square meter. The LAR Court has recorded in paragraph No.25 that the said plot was converted into non agricultural land in 1977 and was sold as an open plot and not as an agricultural land. A sale deed executed by the claimants dated 30/07/2009 with regard to agricultural land admeasuring 398 Sq.Mtrs. in the same gat no.168, for which the claimants paid Rs.29,17,895/-, was before the LAR Court. Yet, the LAR Court observed that “*Hence, considering this plus minus factors and by guess work, I fix the market price of the acquired land Rs.3,500/- per square (Sq.Meter). Hence the applicants are entitled to get compensation for their acquired lands at the rate of Rs.3,500/- per Sq.Mtr.*”

10. At this stage of entertaining the application for withdrawal of amount, we have considered the effect of the evidence recorded before the LAR Court and have, prima facie, noticed that the rate of the agricultural land while granting enhancement was based on the rate of the NA 44 land. In view of these factors, we intend to pass an equitable order keeping in view that if the entire amount is withdrawn

by the claimants and if the acquiring body succeeds in the appeal, it would be difficult for the appellant to recover the amounts withdrawn by the claimants .

11. Hence, this application is partly allowed with the following directions :-

- (a) The applicants /original claimants can withdraw an amount of Rs.3 Crores from the amount that has been deposited in this Court, by complying with the usual conditions.
- (b) The claimants would submit their latest colour photographs, recent address proof, the latest bill of their cell number and copies of their Aadhar cards and PAN cards.
- (c) They would be identified by the learned Advocate.
- (d) The remainder amount alongwith accrued interest would be invested in Fix Deposit Receipts in a Nationalized bank at Aurangabad initially for a period of one year and to be renewed thereafter till the first appeal is decided.
- (e) The applicants shall tender individual affidavits undertaking stating that they would refund the excess amount in this Court within 8 (eight) weeks of any adverse order, if passed in the first appeal.

12. Call for R & P in LAR No.273/2012 decided by the 5th Jt.Civil Judge, S.D. Jalgaon on 09/07/2019.

13. List CA No.901/2020 alongwith F.A. No.268/2021 for final hearing in the first week of December 2022.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)