

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

**926 CIVIL APPLICATION NO.1049 OF 2021
IN FA/215/2020**

**UDDHAV BABARAO GAWALI
VERSUS
THE G.M.I.D.C., THR THE EX. ENGINEER, MINOR IRRIGATION
DIV. NOW LIFT IRRI. DIV. OSMANABAD AND ORS**

Mr. Vivekand V. Ingale, Advocate for the applicant
Mr. A. M. Gaikwad, Advocate for respondent No. 1
Mr. P. M. Kulkarni, AGP for the respondent/State

CORAM : V. L. ACHLIYA, J.

DATE : 22-01-2021

P. C.

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

2. Learned counsel for the appellant-acquiring body opposed the application with contention that the enhancement of compensation is excessive and un-sustainable in law. It is submitted that the compensation assessed @ Rs. 220/- per R by the Special Land Acquisition Officer has been enhanced to Rs. 2437/- per R. The enhancement is more than ten times the compensation assessed by the Special Land Acquisition Officer. It is further submitted that the enhancement has been made on the basis of award passed by the reference court in LAR No. 398 of

2014, 399/2014 and 784/2013 decided on 23-02-2015 which is under challenge before this court in First Appeal No. 2848 of 2017 and the appeal has been admitted. It is submitted that the appellant has good case to succeed in the appeal. In case, the applicant is permitted to withdraw the amount deposited then it will be difficult to recover the amount if the award is set aside or modified.

3. On the other hand learned counsel for the applicant/claimant submits that the appeal filed is devoid of merit. The enhancement is based upon the evidence adduced in the case. The reference court has relied upon the sale instance of similarly situated land while determining the compensation. It is submitted that the award passed in the LAR No. 398 of 2014 has been challenged before this court in the First Appeal No. 2848 of 2017. While deciding the civil application No. 12824 of 2017, filed in the said appeal seeking withdrawal of amount this court has permitted the applicants to withdraw of amount to the extent of 50% of compensation without furnishing security and 25% of amount on furnishing solvent security to the satisfaction of the Registrar (Judicial) of this court.

4. On due consideration of the submissions advanced and order dated 10-10-2017 in the civil application No. 12824 of 2017, I am of the view that the applicant be permitted to withdraw the amount to the extent of 70% of amount deposited on furnishing

undertaking.

5. Considering the challenge raised in the appeal and the small amount involved, it is not desirable to put the applicant to comply with the onus conditions of furnishing 50% surety. It appears from the record that the reference court has considered the sale instance of land purchased in the year 1994 @ Rs. 4,166/- per R. Considering the land in question is jirayat land. The value of the land acquired can be considered as half of the price of sale instance relied. In that view the withdrawal of amount to the extent of 70% on undertaking deserves to be allowed to the applicant. Hence, the following order:

ORDER

- i. The application is partly allowed.
- ii. The applicant is permitted to withdraw the amount deposited to the extent of 70% of amount on furnishing undertaking to the satisfaction of the Registrar (Judicial) of this court with condition that in the event the award is set aside or modified, the applicant shall re-deposit the amount within eight weeks from the date of passing of such order.
- iii. After making payment to the extent of 70% of

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amount, the balance amount be invested in the fixed deposit initially for a period of two years with standing instructions to re-invest the amount in fixed deposit till disposal of appeal.

iv. The amount be paid to the applicant by transferring the amount in his account as per the particulars of bank account to be furnished by the applicant.

v. Withdrawal of amount by the applicant subject to final outcome of appeal.

vi. The application is disposed of in above terms.

[V. L. ACHLIYA, J.]