

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 841 OF 2021

IN

FIRST APPEAL NO. 51 OF 2021

Shantram Jagannath Kadu ...Applicant

In the matter between

The State of Maharashtra ...Appellant

Versus

Shantram Jagannath Kadu ...Respondent

Mr. Anil V. Anturkar, Senior Advocate a/w Mr. Sugandh B. Deshmukh for the Applicant.

Mr. A.R. Patil, Addl.G.P. for the Appellant-State.

CORAM : K.K. TATED &
R.I. CHAGLA, JJ.

DATE : 1 April 2021

ORDER :

1. Heard the learned Counsel for the parties.
2. By this Application, the Applicant-original Claimant is seeking permission to withdraw the amount deposited by the

Appellant-State of Maharashtra in the Registry of this Court as per order dated 21st December 2020 passed by this Court in Interim Application (st.) No. 94820 of 2020.

3. In the present proceedings, the Special Land Acquisition Officer published the Notification under Section 4 of the Land Acquisition Act, 1894 (*'the said Act'*) dated 24th September 1986 for acquiring the Applicant-original Claimant's land from Village Bokadvira, Taluka Uran, District Raigad for New Bombay project after following due process of law. The Special Land Acquisition Officer declaring Award under Section 11 of the said Act dated 24th July 1989 and awarded compensation of Rs. 75,227/- in respect of acquired land admeasuring 11,310 sq.meter. Thereafter, the Applicant-original Claimant preferred Reference under Section 28A(3) of the said Act on 1st August 2016 and claimed the enhanced compensation at the rate of Rs. 2000/- per sq.mtr. towards the market value of acquired land along with all other statutory benefits on the basis of the judgment and award in connected land reference arising from the same notification under Section 4 of the said Act dated 24th September 1986. The reference Court vide judgment and award dated 1st September 2020

relying on judgment of the High Court in *State of Maharashtra Vs. Trimbak Joma Thakur*¹ held that the Applicant-original Claimant is entitled for compensation in respect of acquired land at the rate of 1,725/- per sq.mtr. The Reference Court has awarded sum of Rs. 3,19,20,763/- in favour of the Applicant including statutory benefits as per the said Act.

4. Being aggrieved by the said Award, the Appellant-State of Maharashtra preferred the First Appeal before this Court and also filed Application for stay. The First Appeal was admitted by this Court and stay granted on condition that the Appellant-State of Maharashtra deposit the entire awarded amount in Reference Court within particular time. This Court also permitted the Applicant-original Claimant to prefer the Application, if they so desire, for withdrawal of amount and pursuant the said liberty, the present Application is filed by the Applicant-original Claimant for withdrawal of the amount.

5. The learned Senior Counsel Mr. Anturkar appearing on behalf of the Applicant submits that the compensation awarded by the Reference Court is as per market value. He

1 *First Appeal No. 646 of 1995*

further submits that the Reference Court relying on the judgment of this Court in First Appeal awarded a compensation at the rate of 1750 per sq.mtr. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the Applicant to withdraw the compensation amount. The learned Senior Counsel for the Applicant submits that the Apex Court in the matter of *Bahubali Ravaji Doshi & Ors. Vs. State of Maharashtra & Ors.*² by order dated 1st August 2016 held that Claimants can be permitted to withdraw 50% amount without security and 50% amount by awarding security to the satisfaction of the Court. The said order reads thus:-

- “1. *Leave granted.*
2. *In the nature of the order we propose to pass, it is not necessary to issue notice to the respondents. In all connected matters, this Court has directed the Reference Court to release 50% of the amount deposited by the State without security and the remaining 50% with security to the satisfaction of the Court.*
3. *This order will govern the case of the appellants as well. The High Court may adopt the same pattern in all the connected cases, so that parties do not have to*

² *Special Leave Petition No. 20414 of 2016*

unnecessarily travel to this Court.

4. *In view of the above, the appeal is disposed of. No costs.”*

6. Learned Senior Counsel for the Applicant submits that he received instructions from his client that they are ready and willing to provide bank guarantee for 50% amount for withdrawal. He submits that in view of these facts and in the interest of justice, this Hon’ble Court be pleased to allow the Applicant to withdraw the said amount as per prayer clause (c) of the present Interim Application.

7. On the other hand, the learned AGP Mr. Patil appearing on behalf of the Appellant-State vehemently opposes the present Application. They filed their Affidavit in Reply dated 25th March 2021. Learned AGP submits that if 50% amount is permitted to be withdrawn without security and if the Appellant succeeds in the present First Appeal, then it is very difficult for them to recover the said amount from the Applicant-Claimant. if they succeed in the First Appeal. Hence, in the interest of justice, this Hon’ble Court be pleased to reject the present Interim Application and not to permit the

Applicant-original Claimant to withdraw the 50% amount without furnishing any security. Learned AGP submits that in the present proceedings, the compensation awarded by the Reference Court is on higher side. He submits that they have good chance of success in the present matter.

8. Learned AGP submits that in several matters, this Hon'ble Court passed the orders holding that the Claimant cannot be permitted to withdraw the amount of compensation without furnishing any solvent security and/or bank guarantee. In support of this contention, he relies on paragraph 6 of the Affidavit in Reply, which reads thus:-

“6. I further say that with reference to prayer of the withdrawal of the decretal amount, it is submitted that the applicant may not be allowed to withdraw 50% of the amount without any bank guarantee as in case, if the State succeeds at the final hearing of the above appeal, it would be very difficult to recover the amount from the claimants. It is also submitted that the Hon'ble High Court, in large number of matters, has given liberty to the claimants to withdraw the decretal amount on furnishing solvent security to the satisfaction of Trial Court for the equivalent

amount. The Hon'ble High Court has taken the same view consistently in many other matters. Therefore, it is submitted that the claimant's prayer for withdrawal of the 50% amount without bank guarantee may be rejected."

9. On the basis of these facts, the learned AGP submits that there is no substance in the present Application. Hence, it is required to be dismissed with costs.

10. We heard both the sides at length. It is to be noted that in the present proceedings, the Appellant- State of Maharashtra acquired the Claimant's land admeasuring 11,310 sq.meters at Village Bokadvira, Taluka Uran, District Raigad for New Bombay project by following due process of law by Notification under Section 4 of the said Act, 1894 dated 24th September 1986. Though initially the Special Land Acquisition Officer, by Award under Section 11 of the said Act dated 24th July 1989 awarded compensation of Rs. 75,227/-, the Applicant-original Claimant preferred Reference under Section 28A(3) of the said Act on the basis of the judgment and award arising from the same notification under Section 4 of the said Act dated 24th September 1986. The Reference Court

considering the judgment in the First Appeal passed by this Court in First Appeal No. 646 of 1995 in the matter of *State of Maharashtra Vs. Trimbak Joma Thakur* (supra) held that the Claimant is entitled for compensation in respect of acquired land at the rate of 1,725/- per sq.mtr. In any case, the Applicant in applying for prayer (c) in the present Interim Application, submitting that, they are ready and willing to provide bank guarantee for 50% amount for withdrawal.

11. In view of these facts and as the land is already acquired by the Government, we are of the opinion that the present Application is required to be allowed on following terms and conditions:-

- (i) The Applicant is permitted to withdraw the 50% amount with accrued interest without furnishing any security, but subject to outcome of the First Appeal.
- (ii) The Applicant is permitted to withdraw remaining 50% amount with accrued interest, if any, by furnishing bank guarantee of any nationalized bank

within three months from today and said bank guarantee to be continued till hearing and final disposal of the First Appeal, failing which the Reference Court is directed to deposit the said amount in any Nationalised Bank, initially for a period of one year and the same shall be renewed time to time till hearing and final disposal of the First Appeal.

(iii) Interim Application stands disposed of accordingly.

(iv) No order as to costs.

[R.I. CHAGLA J.]

[K.K. TATED, J.]