

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO.1136 OF 2020
IN
FIRST APPEAL NO. 1022 OF 2014

State of Maharashtra, through District Collector, Wardha and ors.

-Vs-

Brijmohan Sajjankumarji Mohta and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms.H.N.Jaipurkar, A.P.P for appellants.
Mr.R.M. Bhangade, counsel for respondents.

**CORAM : SUNIL B.SHUKRE &
PUSHPA V. GANEDIWALA , JJ.**

DATE : 24.02.2021.

1. By this application, modification of the order dated 30.04.2019 which permitted the respondents to withdraw 60% of the amount in terms of the order dated 01.10.2016 on furnishing a valid bank guarantee has been sought.

2. Shri.Bhangade, learned counsel for the respondents submits that even the condition of furnishing of bank guarantee could not be fulfilled by the respondents and that is the reason why in spite of passing over of long period, which is slightly less than two years since, April 2019, the respondents could not withdraw the permitted 60 % of the decretal amount together with interest. He submits that the land of the respondents has been compulsorily acquired on the one hand and the respondents on the other hand have been

deprived of the fruits of the decree so far.

3. Learned AGP submits that the respondents should be permitted to withdraw the amount not as much as has been allowed to be withdrawn by the initial order passed on 01.10.2016 but somewhat at reduced level.

4. We find that the proposition put forward by the learned AGP is quite reasonable. The reason being that initially this Court had permitted respondents to withdraw 60 % of the decretal amount together with accrued interest in terms of the decree on the premise that respondents, the decree holders, then were ready to furnish solvent surety. These respondents, however expressed their inability to furnish the solvent surety and moved an application before this Court which was Civil Application No.1963 of 2019 for modifying the condition of furnishing of security into one of furnishing of a valid bank guarantee of any nationalised bank and this application was allowed by this Court by the order passed on 30.04.2019. Even the modified condition, as it now emerges, could not be met with by the decree holders and that is the reason why they have filed this application.

5. So, what emerges from the above discussion is that the respondents are not in a position to fulfill any condition that has been or that may be prescribed by this Court as a part of permission granted to the decree holder for withdrawal of 60% of the amount. State has

filed this appeal challenging the decree primarily on the ground that in the opinion of the State, the compensation granted to these respondents is somewhat excessive particularly, in relation to that part which pertains to the number of teak trees. The appeal is still pending and now this Court has to consider waiving of the condition of furnishing of bank guarantee.

6. In these circumstances, we are of the view that if the respondents are to be permitted to withdraw certain portion of the decretal amount without furnishing of solvent surety or bank guarantee and merely on the basis of the personal bond that they may execute, the level of the amount which is to be permitted to be withdrawn would have to be reduced by this Court.

7. In view of above, we partly allow the application and direct that the respondents be permitted to withdraw 40% of the decretal amount together with interest as accrued in terms of the decree on their executing a personal bond in the like sum before Registrar (Judicial) of this Court within a period of four weeks from the date of the order.

8. Civil application stands disposed of accordingly.

JUDGE

JUDGE