

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

909 CIVIL APPLICATION NO.5202 OF 2022
IN FA/1691/2020

MADHAV DASHRATH CHIKATE

VERSUS

THE STATE OF MAHARASHTRA THR
THE COLLECTOR, LATUR ANDORS

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Advocate for Applicant : Mr G.K. Sontakke
AGP for Respondent Nos. 1 and 2/State : Mr P.M. Kulkarni
Advocate for Respondent Nos. 3 and 4 : Mr A.M. Gaikwad

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 28th APRIL, 2022

PER COURT :

1. It is an application moved by the applicant / original claimant to withdraw the remaining balance amount deposited by respondent no.3 in this Court.

2. Heard MR. Sontakke, learned counsel for the applicant / claimant, Mr. A.M. Gaikwad, learned counsel for the acquiring body and Mr. P.M. Kulkarni, learned AGP for respondent nos. 1 and 2 / State.

3. Mr. Sontakke, learned counsel for the applicant / claimant invited my attention to the order dated 08.11.2021 passed by the Hon'ble Supreme Court in Petition for Special Leave to Appeal (C) Nos.17137-17143/2021 (arising out of impugned final judgment and order dated 25.11.2020 in CA No.7540/2020, CA No. 7541/2020, CA No. 7542/2020, CA No. 7543/2020, CA No. 7544/2020, CA No.7545/2020 and CA No. 7546/2020 passed by the High Court of Judicature at Bombay at Aurangabad). By placing reliance on the above said order of the Hon'ble Supreme Court, Mr. Sontakke, learned counsel for the applicant /

claimant seeks permission to withdraw the remaining 60% balance amount of compensation lying in this Court.

4. Mr. Gaikwad, learned counsel for the acquiring body and Mr Kulkarni, learned AGP for the State strongly opposed to allow this application to withdraw remaining 60% balance amount of the compensation. By way of alternate submission they submitted that at the most, the applicant / claimant may be permitted to withdraw in total 75% of the amount of compensation, which would take care of interest of the acquiring body.

5. Mr. Gaikwad, learned counsel for the acquiring body submitted that the Reference Court has committed grave error in awarding the interest in favour of claimant under Sections 28 and 32 of the Land Acquisition Act, 1894, which is found contrary to the full bench judgment of this Court in case of ***The State of Maharashtra Vs. Kailash Shiva Rangari, 2016 (4) ALL MR 513*** and that fact was not brought to the notice of the Hon'ble Supreme Court while deciding the above said Petition for Special Leave to Appeal.

6. I have considered the submissions of Mr. Sontakke, learned counsel for the applicant / claimant, Mr. Gaikwad, learned counsel for the acquiring body and Mr. Kulkarni, learned counsel for the State. I have also gone through the order passed by the Hon'ble Supreme Court in Petition for Special Leave to Appeal © Nos.17137-17143/2021 dated 08.11.2021. The important paragraphs of the order passed by the Hon'ble Supreme Court are reproduced reproduced herein below:

“Shri Sudhanshu S. Choudhari, learned counsel appearing on behalf of the petitioners has heavily relied upon the orders passed by this Court in Civil Appeal No.2481/2021 and other

allied appeals as well as the similar orders passed by this Court with respect to the very acquisition by which this Court in the appeals preferred by the land owners have permitted the land owners to withdraw the amount to the extent of 50% of the enhanced compensation without security and permitting the balance 50% to be released to them on furnishing security to the satisfaction of the Reference Court.

Having heard learned counsel appearing on behalf of the petitioner and instead of calling the respondents herein to pass the similar orders which are passed by this Court in some of the appeals arising of the very acquisition, we dispose of the present Special Leave Petitions by relegating/permitting the petitioners to approach the High Court by way of appropriate applications for modification of the impugned order by pointing out the orders by this Court and as and when such applications are made, the High Court is directed to consider the similar orders passed by this Court which have been relied upon by the learned counsel appearing on behalf of the petitioners and the High Court to modify the impugned order after giving opportunity to the acquiring body.

It goes without saying that as it is reported that the orders passed by this Court are arising out of the very acquisition, the High Court will certainly consider the same and pass similar orders.”

7. In view of the clear directions given by the Hon'ble Supreme Court in the above order, no scope is left before this Court. The applicant / claimant is entitled to withdraw remaining 60% balance amount of compensation, however, on furnishing solvent surety / security to the satisfaction of the Registrar (Judicial) of this Court, which would take care of the interest of the acquiring body and State.

ORDER

(i) The application moved by the applicant / claimant is hereby allowed as under:

(a) The applicant is permitted to withdraw remaining 60% balance amount of compensation deposited by respondent no.3 in this Court with accrued interest thereon on furnishing solvent surety / security to the satisfaction of the Registrar (Judicial) of this Court.

(b) Upon furnishing such solvent surety / security, the Registry to make payment to the applicant / claimant.

(ii) The civil application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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