

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

925 CIVIL APPLICATION NO.1548 OF 2022
IN FAST/1198/2021

GANESH SUBHASH TIWARI AND ORS

VERSUS

THE EX. ENGINEER, JALGAON MEDIUM PROJECT
DIV. JALGAON AND ANR

...

Advocate for Applicants : Mr A.B. Kale
Advocate for Respondent Nos. 1 and 2 : Mr A.D. Pawar
AGP for Respondent No. 3 : Mr P.M. Kulkarni

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 22nd APRIL, 2022

PER COURT :

1. It is an application for withdrawal of compensation amount moved by the applicants/original claimants.
2. Heard Mr A.B. Kale, learned counsel for the applicants/original claimants, Mr A.D. Pawar, learned counsel for the acquiring body/respondent Nos. 1 and 2 and Mr P.M. Kulkarni, learned AGP for the State/respondent No. 3.
3. It is revealed during the course of argument that this Court (Coram : V.L. Achliya, J.) vide order dated 4th February, 2021 was pleased to grant ad-interim stay on condition to deposit 50% of the amount of compensation awarded by the Reference Court before 5th April, 2021. The acquiring body has deposited 50% of the amount of compensation awarded by the Reference Court in this Court.

4. Mr A.D. Pawar, learned counsel for the acquiring body strongly opposed to allow this application for withdrawal of compensation amount by making twofold submissions (1) the Special Land Acquisition Officer was pleased to award compensation in respect of acquired land at Rs. 1,43,500/- per hectare and secondly, the Reference Court was pleased to enhance the same at Rs.75,30,000/- per hectare. He submitted that the Reference Court has awarded the compensation at Rs. 753/- per sq. mtr. which is exorbitant by overlooking well settled position of law. He submitted that the market value needs to be determined on the date of notification under section 4 of the Land Acquisition Act. The Reference Court has not considered that aspect while determining the amount of compensation. Mr A.D. Pawar, learned counsel has also referred certain citations on that point.

5. Mr Kale, learned counsel for the applicants/claimants submitted that the Reference Court has considered the rate given by the Special Land Acquisition Officer at Rs. 650/- per sq.mtr to land Gut No. 129 and 133. On that basis, and by making guess work, the Reference Court has determined the market value of the acquired land at Rs.753/- per sq.mtr. by taking into consideration N.A. potentiality. He submitted that the applicants/claimants are entitled to withdraw entire amount of compensation which is deposited by the acquiring body. The interest of the acquiring body has been protected by retaining 50% amount of compensation.

6. I have considered the submissions of both the sides.

7. The legal points raised by Mr A.D. Pawar, learned counsel for the acquiring body supported by the citations would be definitely taken into account at the time of final hearing of the appeal. At this stage, while deciding the

application for withdrawal of compensation amount, it would not be appropriate to touch the merits of the appeal. At the same time, it cannot be disputed that the interest of the acquiring body also needs to be protected. As pointed out earlier, this Court was pleased to grant stay by protecting the interest of the acquiring body directing to deposit 50% of the amount of compensation under the award. Meaning thereby, 50 % of the amount of compensation has been retained. Thereby, interest of the acquiring body has already been protected.

8. Having regard to the above reasons and discussion, the applicants/claimants are entitled to get entire amount of compensation, however, on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court which would take care of legal interest of the acquiring body. With this, I proceed to pass the following order :-

ORDER

- (A) The application is hereby allowed as under :-
 - (i) The applicants/claimants are permitted to withdraw 50% of the amount deposited by the acquiring body in this Court on furnishing usual undertaking to the Registrar (Judicial) of this Court.
 - (ii) The civil application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

mta