

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

**43 CIVIL APPLICATION NO.4370 OF 2022**  
IN FA/405/2021

RUSHIKESH MACHINDRANATH DALVE AND OTHERS  
VERSUS  
THE EXE. ENGINEER, BEED IRRIGATION DIV., BEED AND OTHERS

...  
Advocate for Applicants : Mr. Abhijeet V. Thombre.  
Advocate for Respondent No.1 : Mr. S. C. Arora.  
AGP for Respondent/State: Mr. S. P. Deshmukh.  
...

CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 28<sup>th</sup> March, 2022.

**PER COURT:**

. It is an application for withdrawal of compensation amount moved by the applicants/original claimants.

2 Heard Mr. A. V. Thombre, learned counsel for the applicants/claimants, Mr. S. C. Arora, learned counsel for respondent/acquiring body and Mr. S. P. Deshmukh, learned AGP for respondent Nos. 2 and 3.

3 Mr. Arora, learned counsel for acquiring body pointed out that initial claim of the original claimants before the SLAO in respect of acquired land at Rs.5,000/- per R. The Reference Court was pleased to award the compensation in respect of acquired land at Rs.10,000/-

per R, which is double than the demand made by the claimants. He pointed out that the SLAO was pleased to award the compensation in respect of acquired land at Rs.980/- per R. He further pointed out that the Reference Court was pleased to award the interest under Sections 28 and 34 of the Land Acquisition Act from the date of possession, which is contrary to the Full Bench decision of this Court in the case of *State of Maharashtra Vs. Kailash Shiva Rangari*, reported in, *2016 (3) Mh.L.J. 457*. He further pointed out that the SLAO has awarded compensation at Rs.7,88,707/- in respect of fruit bearing trees whereas the Reference Court was pleased to enhance the compensation for fruit bearing trees to Rs.31,07,000/-. He further pointed out that the Reference Court has relied upon one sale-deed, which is from another village. By taking help of above said facts, Mr.Arora, learned counsel for acquiring body strongly opposed to allow this application for withdrawal of compensation amount. He further submitted that the Reference Court has awarded exorbitant compensation in respect of acquired land and fruit bearing trees.

4 Per contra, Mr. A. V. Thombre, learned counsel for claimants invited my attention to the impugned judgment, paragraphs 14 and 16. He submitted that the acquired land is in the radius of three kilometers and the sale-deed from another village was rightly considered by the Reference Court. There was no error on the part of

the Reference Court while relying upon the sale-deed from another village. He further pointed out that the Reference Court has relied upon one citation of the Apex Court in this context. He submitted that the SLAO has awarded very meager compensation in respect of acquired land and the fruit bearing trees. The Reference Court has considered the evidence on record and the claim put forth by the claimants and considering the evidence on record, was pleased to enhance the same within four corners of law. He, therefore, urged to allow the claimants to withdraw entire amount of compensation deposited by the acquiring body.

5           I have considered the submissions of both the sides. Perused the impugned judgment and relevant paragraphs relied upon by Mr. Thombre, learned counsel for claimants. It is undisputed position that the claimants have put forth their demand before the Reference Court pertaining to the acquired land at the rate of Rs.5,000/- per R. The Reference Court was pleased to enhance the compensation at the rate of Rs.10,000/- per R, which is double than the initial demand put forth the the claimants. Moreover, it is pointed out that the Reference Court was pleased to award the interest under Sections 28 and 34 of the Land Acquisition Act from the date of possession, which is also contrary to the Full Bench decision of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari***

(supra). Certain arguable points are raised by Mr. Arora, learned counsel for appellant/acquiring body.

6           Having considered the submissions and looking to the grounds of appeal and in order to protect the interest of the acquiring body as well as the claimants, I am of the considered view to allow the claimants to withdraw 50% of the amount of compensation having regard to the peculiar facts and circumstances of this case. It would meet the ends of justice. Hence, the following order is passed:

### **ORDER**

- I.    The application is hereby allowed as under:
- II.   The applicants/original claimants are hereby permitted to withdraw 25% of the amount of compensation with accrued interest thereon on furnishing usual undertaking with the Registrar (Judicial) of this Court.
- III.  The applicants/original claimants are further permitted to withdraw 25% of the amount of compensation with accrued interest thereon on furnishing solvent surety/security to the satisfaction of the Registrar (Judicial) of this Court.

- IV. The remaining amount of compensation with interest shall be invested in fixed deposit account in any Nationalized Bank for a period of one year with renewal clause.
- V. The civil application is disposed of accordingly.

[ SHRIKANT D. KULKARNI, J. ]

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