

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

18 CIVIL APPLICATION NO.4637 OF 2022
IN X-OBJST/2633/2020

KAILASH DALSING BAINADE
VERSUS
THE EX. ENGINEER, MINOR IRRIGATION DIVISION NO.1,
AURANGABAD AND ORS.

Mr P.N. Sonpethkar, Advocate h/f Mr A.P. Sonpethkar, Advocate for
applicant

Mrs R.D. Reddy, Advocate for respondent No.1

Mr A.B. Chate, A.G.P. for respondents No.2 and 3

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 25th April, 2022

PER COURT :

1. It is an application for withdrawal of compensation amount moved by the applicant/original claimant.
2. Heard Mr P.N. Sonpethkar, learned Advocate for applicant, Mrs R.D. Reddy, learned Advocate for respondent No.1/acquiring body and Mr A.B. Chate, learned A.G.P. for respondents no.2 and 3/State.
3. The main controversy involved in the appeal is about awarding compensation to the land as well as trees standing thereon. Mr Sonpethkar, learned Advocate for applicant submits that compensation can be awarded by taking into consideration the quality and fertility of the land as well as fruit bearing trees standing thereon. Mrs Reddy, learned Advocate for respondent no.1/acquiring body submits that this cannot be done. It would result in awarding double compensation, which is not expected in view of provisions of Land Acquisition Act, 1894. Mr Sonpethkar, learned Advocate for applicant has placed his reliance in case of **Ambya Kalya Mhatra (D)**

L.Rs. and Ors. V. State of Maharashtra., reported in AIR 2011 SC (Supp)

625. That contested issue would be decided at the time of final hearing of appeal.

4. Having considered the submissions of both the sides, the applicant can be allowed to withdraw 50% amount of compensation with accrued interest thereon in view of specific ground raised by the acquiring body of awarding double compensation.

ORDER

(i) The application is hereby allowed.

(ii) The applicant/claimant is permitted to withdraw 50% amount of compensation with accrued interest thereon on furnishing usual undertaking to the satisfaction of Registrar (Judicial).

(iii) The remaining amount of compensation shall be kept in Fixed Deposit Account in any Nationalised Bank initially for a period of one year with renewal clause.

(iv) Civil Application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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