

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

911 CIVIL APPLICATION NO.11295 OF 2021
IN FA/4328/2017 WITH CA/11297/2021 IN FA/4332/2017 WITH CA/11296/2021
IN FA/4331/2017 WITH CA/11298/2021 IN FA/4330/2017 WITH CA/11299/2021
IN FA/4329/2017

SALLAUDDIN SHAHABUDDIN MUJAWAR
VERSUS
THE EX. ENGINEER, SINA KOLEGAON PROJECT DIVISION, PARANDA
DIST-OSMANABAD AND ORS

Mr A.S. More, Advocate for applicants
Mr R.C. Patil, Advocate for respondent no.1
Mr S.N. Morampalle, A.G.P. for respondent no.2 and 3

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 19th April, 2022

PER COURT :

1. These are applications for withdrawal of 25% amount of compensation moved by the applicants/original claimants.
2. Heard Mr A.S. More, learned Advocate for applicants/original claimants, Mr R.C. Patil, learned Advocate for respondent no.1/acquiring body and Mr S.N.Morampalle, learned A.G.P. for respondents no.2 and 3/State.
3. Mr More, learned Advocate for applicants invited my attention to the order passed by this Court in Civil Application No12419 of 2021 in First Appeal No.410 of 2017 dated 23.11.2021 and order passed in Civil Application No.15204 of 2019 in First Appeal No.3147 of 2017 dated 19.10.2020. He submitted that in abovesaid two matters, which are arising out of same project and same notification, this Court was pleased to allow the claimants to withdraw **25%** amount of compensation,. He, therefore, urged to allow these applications by applying the rule of parity.

4. On the other hand, Mr R.C. Patil, learned Advocate for respondent no.1/acquiring body strongly opposed to allow these applications. He invited my attention to the earlier order passed by this Court thereby allowing the claimants to withdraw 50% amount of compensation. This Court, after considering the argument advanced by both the sides, allowed the claimants to withdraw 50% amount of compensation. He pointed out that reference Court has awarded interest under Section 28 of the Land Acquisition Act, 1894 from the date of possession which is contrary to the Full Bench decision of this Court in case of **State of Maharashtra, through Sub-Divisional Officer and Special Land Acquisition Officer, Darwha, District Yavatmal Vs. Kailash Shiva Rangari**, reported in **2016 (3) Mh.L.J. 457**. He further pointed out that the reference Court has classified the acquired land in the category of semi bagayat land simply on the evidence of pipeli vv ne though there was no entry of two wells in 7/12 extract. He, therefore, urged that applications may be rejected to protect rights and interest of the acquiring body.

5. Mr Morampalle, learned A.G.P. for respondents no.2 and 3 argued on the same line.

6. I have considered the submissions of both the sides, I have also gone through the orders passed earlier by this Court referred above, on the basis of which Mr More, learned Advocate for applicants seeks withdrawal of remaining 25% amount of compensation on the ground of parity. True it is that in above referred matters, this Court allowed the claimants to withdraw 75% amount of compensation, 50% on furnishing usual undertaking and 25% on furnishing solvent surety/security to the satisfaction of Registrar (Judicial) of this Court. Certain points regarding merits of the appeals are raised which cannot be entertained at this stage. The order passed earlier regarding withdrawal of

amount of compensation needs to be studied carefully, whether the Court had considered all the aspects while allowing the claimants to withdraw the amount of compensation. On careful study of the order passed earlier by this Court (Coram : Smt. Vibha Kankanwadi, J.) dated 26.7.2019 in Civil Application No.6614 of 2019 in First Appeal No.4331 of 2017 with connected matters, it is evident that the Court had applied its mind and also considered the argument advanced on behalf of both the sides and considered the copy of order passed by this Court earlier in Civil Application no.3021 of 2018 with connected matters and passed reasoned order thereby allowing claimants to withdraw 50% amount of compensation

7. After considering the factual aspects and argument advanced on behalf of both the sides, this Court was pleased to allow the claimants to withdraw 50% of the amount of compensation subject to furnishing undertaking. So far as question of applying parity is concerned, I am unable to accept the argument advanced by Mr A.S. More, learned Advocate for applicants/claimants. The facts of each case are different though the cases are arising out of same project and notification. When the Court has decided the application for withdrawal of amount of compensation after applying its mind and passed in-detail order, it would not be appropriate to interfere with it and that too by applying the rule of parity. Therefore, I am not convinced to allow these applications. Hence, the applications are rejected.

8. After passing this order, Mr A.S. More, learned Advocate for applicants insisted that the applicants may be allowed to withdraw the amount of compensation by furnishing Bank guarantee. The prayer is turned down.

(SHRIKANT D. KULKARNI, J.)