

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.722 OF 2022

SARJERAO ABA PANGARE
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR,
AHMEDNAGAR

...
Advocate for Petitioner : Mr. Prashant R. Nangare
AGP for Respondent-State : Mr. K. S. Patil
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04-03-2022

PER COURT :-

Heard the learned Advocate for the petitioner.

2. The learned Assistant Government Pleader waives service of notice for the respondent-State.
3. The petitioner by this petition challenges the order passed by the learned Civil Judge, Senior Division, Ahmednagar, below Exhibit-16 in Regular Darkhast No. 249 of 2004, thereby directing the petitioner to furnish bank guarantee of Rs.2,90,276/- (Rs. Two Lakh Ninety Thousand Two Hundred Seventy Six) for withdrawal of the amount of compensation deposited by the Acquiring Body.

4. The petitioner's land is acquired for the project of Belpara Medium Project Additional Tali Canal at Wadgaon, Taluka Pathardi, District Ahmednagar and since the petitioner was not satisfied with the compensation awarded, he filed reference, which was allowed by the Reference Court and the compensation was enhanced. In Regular Darkhast No. 249 of 2004 filed by the petitioner, respondent - State deposited decretal amount of Rs.2,90,276/- (Rs. Two Lakh Ninety Thousand Two Hundred Seventy Six). The State has challenged the decision of Reference Court by filing First Appeal No. 1142 of 2009.

. The petitioner filed application for withdrawal of the said amount deposited in the execution proceeding. The application was allowed on the condition that the petitioner should furnish bank guarantee to the tune of Rs.2,90,276/- (Rs. Two Lakh Ninety Thousand Two Hundred Seventy Six). The petitioner furnished the bank guarantee on 01.11.2007.

. It is grievance of the petitioner that, in absence of any stay to the Judgment of Reference Court in the First Appeal, the Executing Court was not justified in asking for bank guarantee for indefinite period. Hence, this petition.

5. The learned Advocate for the petitioner pointed out the order passed by this Court in Farad Continuation Sheet

[CA/8535/2008 in FAST No.18417/2005 and CA/8536/2008 in FAST No.18419/2005] on 09.04.2009, the learned Advocate for the petitioner submitted that, there is no stay granted to the impugned Award.

6. In support of his contention that the Executing Court was not justified for asking bank guarantee for withdrawal of amount, the learned Advocate for the petitioner has relied on following decisions -

- (i) *Shri. Ananda Kadu Gawali and others Versus The Special Land Acquisition Officer, Jalgaon, UTPH-1 and another [Writ Petition No. 2956 of 2008, dated 04.06.2008],*
- (ii) *Suryabhan Seetram Garad and others Versus The State of Maharashtra [WP/5420/2018 with connected WP/5423/2018, dated 21.08.2018],*
- (iii) *Laxman Jagannath Narote and another Versus The State of Maharashtra and another [WP/944/2013, dated 20.06.2013], and*
- (iv) *Pandhari Gangaram Patil Versus Special Land Acquisition Officer, 2011 (2) Mh. L. J. 579.*

In aforesaid Judgments, a consistent view is taken by this Court that, unless there is a stay to the Award of compensation granted in the First Appeal preferred by the State, the Executing Court cannot direct to furnish a bank guarantee by the beneficiaries for withdrawing the amount of compensation.

7. It is not in dispute that, the petitioner has lost his land in the public project and the amount sought to be withdrawn is by way of enhanced compensation awarded under Section 18 of the Land Acquisition Act, 1894. The grievance of the petitioner is squarely covered by the orders passed by this Court in the above petitions.

8. In the result, Writ Petition is allowed.

The petitioner shall furnish a solvent surety to the extent of 50% of the amount of compensation along with accrued interest and for remaining amount, the petitioner shall furnish undertaking to indicate that, if the petitioner suffers any adverse order in the First Appeal, he would return the excess amount, if any, within a period of six weeks from the date of such order.

(NITIN B. SURYAWANSHI)
JUDGE

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