

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

WRIT PETITION NO. 3528 OF 2022

Venkatrao S/o Govindrao Pawar,
Age : 51 Years, Occ. Agriculture,
R/o. Malkapur, Tq. Udgir,
Dist. Latur.

.. Petitioner

V E R S U S

1. The State of Maharashtra
Through the Secretary to the
Government of Maharashtra in
Revenue & Forest Department,
Mantralaya, Fort, Mumbai- 32.
 2. The Collector, Latur.
 3. The Sub Divisional Officer-
Cum-Land Acquisition Officer,
Udgir, Dist. Latur.
- .. Respondents

Advocate for the Petitioner : Mr. N. P. Patil, Jamalpurkar
A.G.P for Respondent Nos. 1 to : Mr. S. P. Tiwari
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**CORAM : R. D. DHANUKA &
S.G. MEHARE JJ.
DATE : 01.04.2022.**

ORAL JUDGMENT (PER R.D. DHANUKA J.) :-

Rule. The learned A.G.P waives service of notice for
respondent Nos. 1.

2. Rule is made returnable forthwith.

3. By this petition filed under Article 226 of the Constitution of India, petitioner prays for quashing and setting-aside the impugned communicated dated 21.07.2021 issued by the respondent No.3 Sub Divisional Officer, Udgir directing the petitioner to furnish a Bank Guarantee for seeking withdrawal of the amount of compensation. The petitioner also seeks writ of mandamus against respondent Nos. 2 and 3 directing them to forthwith disburse and pay the amount of compensation to the petitioner determined under award dated 21.01.2020 under Section 28-A of the Land Acquisition Act, 1894 on the same terms and conditions which the Joint Civil Judge, Senior Division at Udgir vide common Judgment and award dated 05.10.2012 passed in L.A.R. No. 486 of 2010 and other connected matters.

4. By the letter dated 21.07.2021 respondent No.3 informed the petitioner that the amount of compensation of Rs. 42,47,029/- has to be paid to the petitioner and further directed the petitioner to furnish the Bank Guarantee of any Nationalized Bank of the same amount.

5. By the order dated 16th March, 2022 passed by this Court, this Court has adjourned the matter till today to enable the learned AGP to take instructions on the proposal made by the

learned counsel for the petitioner to the extent of 50% of the Nationalized Bank and balance amount on tendering an undertaking to that effect.

6. The learned AGP tenders a copy of Government resolution dated 29th August, 2015 stating that for seeking withdrawal of the amount of compensation payable under Section 28-A of the Land Acquisition Act, 1894 withdrawal can be permitted only upon furnishing of the Bank guarantee of a nationalized Bank by the petitioner. He submits that in view of the State-Government resolution, the petitioner cannot be allowed to withdraw the 50% of the amount only upon furnishing an undertaking.

7. Learned counsel for the petitioner on the other hand tenders copy of the order dated 7th October, 2021 passed by the Division Bench of this Court in Writ Petition No. 9386 of 2021 in case of Kashibai Apparao Patil Died Through LRS Jeevan Panditrao Patil Versus the State of Maharashtra and others and would submit that in the similar circumstances this Court has permitted to withdraw 50% of the amount on furnishing undertaking by the petitioner that in the event the appeal filed by the acquiring body is allowed and the petitioner is required to re-deposit the amount within three months and has

permitted 25% amount on furnishing solvent security of the like amount and balance 25% amount on furnishing the Bank Guarantee of any Scheduled or Nationalized Bank.

8. We are inclined to pass order on the similar line as passed by the Division Bench of this Court in the case of Kashibai Apparao Patil Died Through Lrs Jeevan Panditrao Patil Versus The State of Maharashtra and others (supra).

9. The petitioner will be entitled for withdrawal of the amount as per the award passed under Section 28-A of the Land Acquisition Act, 1894 on following conditions-

A) 50% of the amount is allowed to be withdrawn by furnishing an undertaking that in the event the appeal filed by the acquiring body is allowed and the petitioner is required to re-deposit the amount the petitioner would re-deposit the amount within three months.

B) The petitioner is allowed to withdraw 25% of the amount on furnishing solvent security of the like amount, and

C) The remaining 25% amount is allowed to be withdrawn on furnishing the Bank Guarantee of any Scheduled or Nationalized Bank.

10. It is made clear that the solvent security of 25% amount shall be furnished within four weeks from the date of Registrar

(Judicial) of this Court adjudicating upon the solvent security in respect of the 25% amount after hearing the learned counsel for the petitioner as well as acquiring body. The learned Registrar shall pass an order within three weeks from the date of communication of this order. If the petitioner fails to furnish undertaking in respect of 50% of the amount within two weeks from today, by filing such undertaking in this Court and copy of the same shall be served upon the office of the Government pleader, then the amount of 50% shall be invested by the acquiring body in the fixed deposit of the Nationalized Bank for the period during which the appeal filed by the acquiring body would be pending.

11. We further make clear that if the petitioner does not furnish solvent security towards security of the the amount 25% as determined by the learned Registrar of this Court, the said amount shall also invested in fixed deposit which is received from the acquiring body in any Nationalized Bank during the pendency of the appeal preferred by the acquiring body.

12. In so far as remaining 25% amount is concerned, the petitioner shall furnish Bank guarantee of Nationalized Bank or scheduled Bank within six weeks from today the shall serve a

copy of the Bank Guarantee to the Office of the Government Pleader within one week from the dater of furnishing such amount .

13. It is made clear that if the Bank Guarantee is not furnished within six weeks from today, the said amount shall also be invested into fixed deposit of Nationalized Bank during the pendency of the appeal.

14. The Bank guarantee that was furnished by the petitioner shall be kept alive for a period of two years for the time being and for like period, depending upon the pendency of appeal which is filed by the acquiring body. Before expiry of period the acquiring body shall inform the petitioner about the pendency of the appeal that was preferred by the acquiring body. The Writ Petition is allowed in aforesaid terms.

15. Rule made absolute No order as to costs.

Parties shall act on authenticated copy of this order.

(S.G. MEHARE J.)

(R.D. DHANUKA J.)

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