

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (CAC) NO. 1 OF 2022

IN

CIVIL REVISION APPLICATION NO. 23 OF 2021

(Special Planning Authority, Nagpur ..vs.. Ragoba Mungule, through his LRs. and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.N. Kothari, Counsel for the applicant,
Mr. Amol Mardikar, Counsel for non-applicants 1(1) to 1(6),
Mr. K.L. Dharmadhikari, AGP for non-applicant 2.

CORAM : ROHIT B. DEO, J.

DATED : 14-01-2022

The non-applicants/decreed-holders are seeking modification in the order dated 06-10-2021 on the premise that while the decreed-holders are permitted to withdraw the amount of Rs. 85,29,017/- (Rupees Eighty Five Lac Twenty Nine Thousand Seventeen) deposited in Regular Dharkhast 110/2001, the condition is to furnish solvent surety to the satisfaction of the Nazir of the trial Court, which the decreed-holders are not in a position to furnish, in the result that decreed-holders are prevented from enjoying the fruits of the decree.

2. Brief facts are, that though the land which is acquired, appears to have been for the applicant in Civil Revision Application 23/2021 i.e. the Special Planning Authority, Maharashtra Housing Area Development Authority (MHADA), the said planning authority was not party to the reference proceedings under Section 18 of

the Land Acquisition Act, 1894. However, it is also an admitted position that the said authority has till date not challenged the judgment dated 22.12.2000 rendered by the reference Court in Land Acquisition Case 51/1997.

3. It is the case of MHADA that it was only during the course of execution proceedings that MHADA came to know that the compensation is enhanced.

4. MHADA preferred an application in the execution proceedings seeking impleadment. The application preferred by MHADA was allowed and MHADA was impleaded in the execution proceedings. It appears that during the course of execution proceedings, MHADA preferred application Exhibit 45 purporting to object to the enhancement of compensation by the reference Court. The executing Court rejected the objection, MHADA preferred Civil Revision Application 23/2021, which this Court rejected by judgment dated 20-09-2021.

5. In view of the rejection of the Civil Revision Application, the decree-holders preferred Civil Application (CAC) 19/2021 seeking permission to withdraw the amount of Rs. 85,29,017/- (Rupees Eighty Five Lac Twenty Nine Thousand Seventeen) deposited by MHADA in Regular Darkhast 110/2001. This application was allowed vide order dated 06.10.2021 and the decree-holders were permitted to withdraw the said amount by furnishing solvent surety. As noted supra, the decree-

holders are seeking modification of the said order to the extent that the condition is to furnish solvent surety.

6. Considering that the order in reference case which is sought to be executed, is not challenged in appeal either by the State Government or then by MHADA, I do not see any propriety in insisting that the decree-holders should furnish solvent surety to withdraw the amount which is due and payable to them in view of the order of the reference Court. Needless to say, that if at some point in time, the judgment of the reference Court is challenged and is set aside, the decree-holders shall be liable to refund the amount with interest at the bank rate.

7. This application is allowed. The order dated 06-10-2021 is modified and the condition to furnish solvent surety is deleted.

JUDGE

adgokar