

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

WRIT PETITION NO.4830 OF 2022

**DHONDUBAI KERBA BEMBADE
VERSUS
VIDYADHAN NIVRATTI KRISHNAPURE AND OTHERS**

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Mr. Ameya N. Sabnis, Advocate for the Petitioner.
Mr. S. N. Morampalle, AGP for Respondents-State.
Mr. G. D. Kale, Advocate for Respondent Nos.1 and 5.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 07th FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. The challenge in the petition is to the order dated 28.03.2022 and the order dated 19.04.2022, whereby the petitioner's application seeking stay on the disbursement of the amount to respondent no.5 came to be rejected.

3. The impugned orders were passed in execution proceedings arising out of the acquisition of the land in LAR No.2066/2010. The subject matter of acquisition is survey no.151 and survey no.160. As far as survey no.151 is concerned, respondent no.1 had executed sale deed in respect of survey no.151 in the year 2002 in favour of respondent no.5. In the year 2010, the land came to be acquired and reference was made being LAR 2066 of 2013, which came to be decided in the year 2013. Regular Civil Suit No.30/2017 was instituted by the petitioner for partition and separate possession in respect of acquired land i.e.

survey no.160 and survey no.151, which came to be partly decreed and it was declared that the petitioner and respondent no.1 are having half share each in suit property survey no.160 and sale deed of 20.06.2002 and 28.04.2011 executed by defendant nos.1 and 2 in favour of defendant nos.5 and 6 are not binding on the plaintiff. First Appeal No.2732/2018 was filed by the Acquiring Body before this Court challenging the judgment and award dated 08.04.2013 passed in LAR No.2066/2013, in which the petitioner herein intervened. This Court by order dated 09.08.2021 held that the petitioner-intervenor is declared to have half share in the land acquired. Considering the facts of the case, this Court held that it is not desirable to grant withdrawal of the entire amount in favour of the respondent no.1 and 50% of the amount be deposited by the Acquiring Body in this Court for securing the claim of the petitioner and the balance amount i.e. 50% could be paid to respondent no.1. This Court further held that 50% amount be paid to respondent no.1 and 50% amount be kept in Fixed Deposits towards share of the petitioner, which this Court is informed has been withdrawn by the petitioner by way of preferring Civil Application No.11873/2021. Another aspect, which has been pointed out by the learned counsel for the Acquiring Body is that, by the order dated 09.08.2021 this Court had directed that the exact figure of amount which is payable to the petitioner and respondent no.1 to be ascertained in terms of the Full Bench judgment, which pertains to the calculation of the interest granted under Section 28 of the Land Acquisition Act.

4. Before Executing Court respondent nos.5 and 6 filed a joint application for withdrawal of the deposited amount of Rs 7,62,813/, which came to be allowed by order dated 28.03.2022.

The petitioner objected to the application and filed an application for review of the order, which came to be rejected. The Executing Court has rejected the application of the petitioner by placing reliance on the decision of this Court dated 09.08.2021 in First Appeal No.2732/2018, wherein it was held that keeping aside the share of the petitioner, 50% of the amount is directed to be withdrawn by Respondent No 1 Vidyadhan. The Executing Court relied upon paragraph no.11 of the decision dated 09.08.2021, wherein this Court directed that whatever amount has been deposited by the Acquiring Body in the Appeal, be transferred to the Reference Court for being paid to the rightful claimants as per their share and the excess amount which would become payable to the Acquiring Body in view of the calculation of interest granted under Section 28 of the Land Acquisition Act, pursuant to the Full Bench judgment, be returned to the Acquiring Body.

5. The Executing Court without carrying out the exercise which has been directed by paragraph no.11 of the judgment of this Court dated 09.08.2021 has rejected the application of the petitioner and directed the amount which is received in the name of respondent no.5 be paid to him after the verification and identification.

6. Considering the facts of the case and in particular the direction of this Court dated 09.08.2021 in First Appeal No.2732/2018, the Executing Court is directed to ascertain firstly the amount which would be payable for acquisition, after taking into consideration the judgment of the Full Bench in respect of interest amount and then to ascertain the amount payable to respondent nos.1 and 5 and the petitioner by considering that 50%

of amount deposited in this Court had already been withdrawn by the petitioner. This direction to carry out this exercise is being issued as none of the parties are able to demonstrate that the Executing Court has carried out this exercise. This exercise to be carried out within a period of four weeks from today. The actual amount be ascertained and the rights of each of the parties to be determined in accordance with the order dated 09.08.2021 passed in First Appeal No.2732/2018.

7. Writ Petition is allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE