

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.8238 OF 2023
IN
FIRST APPEAL NO.3723 OF 2023

LILADHAR TUKARAM PATIL

VERSUS

THE EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT, JALGAON

...

Mr. V.B. Patil, Advocate for applicant

Mr. G.K. Naik Thigle, Advocate for respondent

...

CORAM : SMT. VIBHA KANKANWADI
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 04th SEPTEMBER, 2023

PRONOUNCED ON : 09th OCTOBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for withdrawal of amount by the original claimant. By order dated 18.11.2022 the original appellant – acquiring body was directed to deposit 75% of the amount awarded by the reference Court as part of interim relief of stay. By order dated 17.02.2023 that order was extended by further two weeks. It appears that still there was

no deposit of the amount, but on 05.06.2023 the matter was not on board but the acquiring body had come with oral request of allowing it to deposit the amount and, therefore, office was directed to accept the Demand Draft. As on today the acquiring body has deposited 100% amount in this Court i.e. Rs.3,54,33,630/-.

2 Affidavit-in-reply opposing the withdrawal of amount has been filed on behalf of the acquiring body. The affidavit of Girish Raghunathrao Suryawanshi, Sub Divisional Officer, Public Works Department, Sub Division No.1, Jalgaon has been filed. It has been stated that the subject-matter of the acquisition is to the extent of 27 R land out of Gat No.1199. It was acquired way back on 13.11.1986 bearing Gat No.1200. In view of order passed by this Court in Writ Petition No.2928 of 2013 the appellant was directed to initiate acquisition proceedings vide order dated 21.01.2016 and thereafter the Special Land Acquisition Officer has passed the Award. It came to be further assailed before the Tribunal under Section 64 of the Land Acquisition Act. Vide order dated 26.11.2020 the Tribunal enhanced the compensation to the tune of Rs.2,880/- as against the rate of Rs.940/- per sq. mtr. granted by the learned authority. Certificate issued by competent authority on 27.09.2022 says that the land falls within non development zone. It is contended that the land which is subject-matter of the present proceedings is

likely to be forming part of Gat No.1200 which is acquired by Irrigation Department to the extent of 12 R. Thus, the joint measurement of Gat No.1200 and 1199 in pursuant to the acquisition proceedings completed in the year 1986 by Public Works Department, Jalgaon. The decision of the proceedings by the learned appropriate authority came during Covid-19 pandemic period and, therefore, the fact could not be brought to the notice of the learned authority and amount of Rs.50,00,000/- (Rupees Fifty Lac only) is already received by the claimant. Therefore, in the affidavit itself it is then stated that before the amount is permitted to be withdrawn the land Gat No.1199 and 1200 be measured.

3 Heard learned Advocate Mr. V.B. Patil for the applicant and learned Advocate Mr. G.K. Naik Thigle for the respondent.

4 Learned Advocate Mr. G.K. Naik Thigle appearing for the acquiring body reiterated the contents of the affidavit-in-reply and tried to submit that there appears to be a possibility that the same land has been acquired or shown to have been acquired twice. The measurement is, therefore, necessary. If the entire amount is allowed to be withdrawn, then in case the appeal is allowed to any extent, it would be difficult for the acquiring body to recover the amount.

5 At the outset, we would say that the point now tried to be raised on behalf of the acquiring body could have been raised before the competent authority. Now, it is stated that since the hearing was done in Covid-19 period, that aspect is required to be gone into. Still the fact remains is that as per paragraph No.8 of the affidavit-in-reply it has been expressed that the land which is subject-matter of the present proceeding is likely to be forming part of Gat No.1200 which is acquired by the Irrigation Department to the extent of 12 R, but paragraph No.4 says that the subject-matter of the acquisition is to the extent of 27 R land out of Gat No.1199. Still there is difference of 15 R land which appears to have been admittedly acquired by the acquiring body. Therefore, partial withdrawal is definitely justified.

6 As per the documents produced and affidavit-in-reply amount of Rs.3,54,33,630/- has been deposited in this Court and, therefore, there is no hurdle in allowing the application to withdraw Rs.2,00,00,000/- (Rupees Two Crores only). Hence, following order.

ORDER

1 The application stands partly allowed.

2 Applicant is allowed to withdraw amount to the extent of

Rs.2,00,00,000/- (Rupees Two Crores only), deposited in this matter, on undertaking.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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