

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

26 WRIT PETITION NO.9728 OF 2023

BHAGWAN RAMCHANDRA PAWAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND
OTHERS

Mr.A.V.Thombre, Advocate for the Petitioners.
Mr.P.K.Lakhotiya, AGP for the Respondent/State.

(CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.)

DATE : AUGUST 28, 2023

PER COURT :

1. This matter was heard for quite some time.
2. The issue is as regards the acquisition of the properties of the Petitioners for construction of the Khodas Storage Tank, Tq. Dharur, Dist. Beed. The due procedure of Law was followed. Award was delivered by the S.L.A.O. on 19.09.2008. The award amounts have already been paid to the Petitioners. Co-claimants from the same project filed LAR Proceeding No.13/2014 before the learned Joint Civil Judge, S.D. Majalgaon. which was decided on 04.01.2020. The

Petitioners did not initiate a reference case u/s 18 and applied for the benefit u/s.28-A by filing an application. The award u/s 28-A was delivered on 22.08.2022.

3. The learned AGP, who has appeared on behalf of Respondent Nos. 1, 2, 4 and 5, submits that the judgment delivered u/s 18 is now a subject matter of a first appeal before the learned Single Judge. The formula devised by the LAR Court u/s 18 is the basis of the Petitioner getting the benefits under Section 28-A. If that formula is set aside or modified, the order would *ipso-facto* apply to the order passed u/s 28-A in favour of these Petitioners.

4. The learned Advocate for the Petitioners relies on the order dated 28.03.2022 passed by the learned Single Judge of this Court in CA No.4370/2022 in First Appeal No.405/2021, thereby permitting the original claimants to withdraw 25% of the amount with accrued interest, by furnishing a usual undertaking to the Registrar (Judicial) of this Court and further 25% amount with accrued interest, by tendering a solvent surety / security to the satisfaction of the learned Registrar (Judicial). Rest of the amount is directed to be deposited in a fixed

deposit in a Nationalized Bank.

5. The learned AGP submits that the Petitioners can not intervene in the said pending first appeal proceedings since their case is not before the said Court. The first appeal is admitted by the learned Single Judge and subject to the order dated 28.03.2022, stay has been granted to Section 18 award.

6. There can be no debate that the Petitioners before us stand on the same footing as the Petitioners u/s 18 in the light of Section 28-A, which is introduced to draw parity and render all these claimants to the equal treatment of Law. While staying the Section 18 judgment, the learned Single Judge granted liberty to withdraw 50% of the amount as recorded above. Parity in Law has to be maintained while dispensing justice. If these Petitioners are at par with those Respondents in the first appeal, the same treatment has to be given to these Petitioners. As such, being a Court of equity, we intend to pass an equitable order, which would maintain parity between these Petitioners and the claimants u/s 18, thereby treating them equally in Law.

7. In view of the above, **this Petition is disposed off.** The Petitioners are permitted to withdraw the amounts strictly in accordance with Clause 2 and 3 of the order dated 28.03.2022 passed by the learned Single Judge of this Court in Civil Application No.4370/2020.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)