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9.1-CA-13959-2021

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.13959 OF 2021
IN FA/2918/2017

Shivaji Sadashiv Chavan

...Applicant

Versus

The Executive Engineer, Medium Project
Division, Osmanabad (UNDER GMIDC,
Aurangabad) And Others

...Respondents

Mr. S.A. Wakure, Advocate for the applicant.
Mr. D.B. Pawar, Advocate for respondent No. 1.
Mr. S.K. Shirse, AGP for State.

.....

CORAM : KISHORE C. SANT, J.

DATE : 5th DECEMBER, 2023

PER COURT:

1. Heard the parties.
2. This application is filed seeking withdrawal of amount of compensation deposited by respondent/acquiring body in this Court. Earlier this Court by order dated 23.06.2017, was pleased to allow claimant/applicant to withdraw the amount to the extent of 75% of the amount deposited in this Court. The 25% of the amount was allowed to be withdrawn on furnishing undertaking, 25% of the amount on furnishing solvent surety and remaining 25% of the amount on furnishing bank guarantee. The applicant

Bhagyawant Punde

therefore approached the Hon'ble Apex Court by filing Special Leave to Appeal (C) No. 32133/2017. The Hon'ble Apex Court was pleased to modify the order passed by this Court directing to release 50% amount of the enhanced compensation without security and 50% on furnishing security to the satisfaction of the Collector. This order was passed on 16.07.2018. The applicant thereafter approached the Land Acquisition Officer for release of amount. However, Land Acquisition Officer by communication dated 16.03.2020 directed the applicant to furnish bank guarantee for release of 50% of the amount. The applicant therefore again approached the Hon'ble Apex Court by filing Miscellaneous Application No. 1642/2020. The Hon'ble Apex Court passed the following order:

"Upon hearing the counsel the Court made the following

O R D E R

The applications seeking modification are dismissed. We, however, observe that the Collector may consider any other form of security rather than insisting on furnishing bank guarantee.

Pending applications also stand disposed of."

3. It is thus clear that authorities need not insist on furnishing bank guarantee. Though, the Hon'ble Apex Court has passed the above order, learned Collector by communication

dated 08.03.2021 again insisted for bank guarantee. He observed that it would not be appropriate to release the amount only on taking security as it would be difficult to recover the amount once it is released.

4. The applicant has therefore filed this application with a prayer to allow withdrawal of 50% amount without furnishing bank guarantee. By way of amendment applicant has also prayed for quashing of the impugned communication dated 08.03.2021 issued by the Collector, Osmanabad.

5. This application is opposed by learned AGP submitting that the Collector has rightly passed the order considering the interest of the acquiring body.

6. By considering the order passed by the Hon'ble Apex Court it is clear that it is expressly made clear that the authority shall not insist on furnishing of a bank guarantee. The order/communication of the Collector dated 08.03.2021 runs exactly contrary to the order passed by the Hon'ble Apex Court. This Court takes serious note of the order passed by the Collector. Once, the Hon'ble Apex Court has made specifically clear that not to insist on a bank guarantee, no authority could

act contrary to the said order. The order passed by Collector is not only against the order of the Hon'ble Apex Court but the same shows that he has not properly followed the order of the Hon'ble Apex Court. This needs to be seriously noted by the concerned officer. In view of the above, following order:

ORDER

1. Civil Application is allowed.
2. Remaining amount of 50% lying in this Court be allowed to be withdrawn on furnishing solvent surety/security to the satisfaction of the Registrar (Judicial) of this Court, with interest accrued, if any.
3. Communication/Order dated 08.03.2021 passed by the Collector is quashed and set aside. This order be specifically brought to the notice of the concerned officer who has passed the order dated 08.03.2021.

[KISHORE C. SANT, J.]