



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.3958 OF 2019
IN FA/998/2019

1. Tanhabai w/o Gavaji Kulkarni
Died during the pendency of L.A.R.
 2. Vijaya w/o Chandrakant Wakde
 3. Manohar s/o Gavaji Kulkarni
 4. Vinod s/o Gavaji Kulkarni
 5. Surekha Raju Khandekar
 6. Avinash s/o Gavaji Kulkarni
- .. Applicants**

Versus

1. Dhondabai w/o Gokul Bansode
 2. Sitabai Kashinath Magare
 3. Sushilabai Nana Kulkarni (died)
Through LRs.
 - 3A. Ashabai Raosaheb Magare
 - 3B. Vilas Nana Kulkarni
 - 3C. Sainath Nana Kulkarni
 - 3D. Usha Milind Borde
 4. Bebibai Kantilal Salve
 5. Dadarao Kachru Jagdhane
 6. Shobha Babasaheb Magare
- .. Respondents**

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WITH

CIVIL APPLICATION NO.14384 OF 2019
IN FA/998/2019

1. Dhondabai w/o Gokul Bansode
2. Sitabai Kashinath Magare

3. Sushilabai Nana Kulkarni (died)

Through LRs.

3A. Ashabai Raosaheb Magare

3B. Vilas Nana Kulkarni

3C. Sainath Nana Kulkarni

3D. Usha Milind Borde

4. Bebibai Kantilal Salve

5. Dadarao Kachru Jagdhane

6. Shobha Babasaheb Magare

.. Applicants

Versus

1. Tanhabai w/o Gavaji Kulkarni

Died during the pendency of L.A.R.

2. Vijaya w/o Chandrakant Wakde

3. Manohar s/o Gavaji Kulkarni

4. Vinod s/o Gavaji Kulkarni

5. Surekha Raju Khandekar

6. Avinash s/o Gavaji Kulkarni

.. Respondents

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Mr. Aakash D. Gade h/f Mr. S. J. Salunke for the applicants in CA/3958/2019 and for respondents in CA/14384/2019.

Mr. R. O. Awasarmol, Advocate for applicants in CA/14384/2019 and for respondents in CA/3958/2019.

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

RESERVED ON : 7th November, 2023

PRONOUNCED ON : 7th December, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Civil Application No.3958 of 2019 has been filed for stay to the impugned judgment and award dated 03.12.2018 passed by the learned 3rd Joint Civil Judge Senior Division, Aurangabad in Land Acquisition Reference No.242 of 2013, whereas Civil Application No.14384 of 2019 has been filed for direction that the respondents therein should be directed to deposit the amount, which they have withdrawn and that they should not withdraw further amount.

2. Heard learned Advocate Mr. S. J. Salunke for the applicants in Civil Application No.3958 of 2019 and for respondents in Civil Application No.14384 of 2019 and learned Advocate Mr. R. O. Awasarmol for applicants in Civil Application No.14384 of 2019 and for respondents in Civil Application No.3958 of 2019.

3. It can be seen that the case has a chequered history. The land of the original respondents admeasuring 3 H 75 R from Gat No.58 came to be acquired for Shendra M.I.D.C. Project at Karmad, District Aurangabad. The land was standing in the name of one Manohar Kulkarni and others and accordingly the award was declared in their names. The amount of compensation was fixed by passing an award, however, claimant Dhondabai and Tanhabai raised objection at the time of disbursement of

amount contending that they have share in the acquired land. Under the said circumstance, Special Land Acquisition Officer forwarded the petition to the Reference Court under Section 30 of the Land Acquisition Act along with four cheques dated 20.09.2013 total amounting to Rs.2,13,03,750/-. The parties have led evidence before the Trial Court and then by judgment and award dated 03.12.2018, learned 3rd Joint Civil Judge Senior Division, Aurangabad held that original claimant No.1 is entitled for 1/3rd amount of compensation and original claimant Nos.2 to 6 are entitled to in all 1/3rd amount of compensation. All the respondents then are entitled to remaining 1/3rd amount of compensation. The appellants/applicants are the original respondents.

4. In the application for stay, it has been contended that in fact the original claimants had no *locus standi* to claim share in the acquired property. The applicants are the only persons entitled to the said amount of compensation. Learned Trial Judge erred in considering the objections. The cross-examination of original claimant No.1 has not been considered by the learned Trial Judge properly. In fact, Land Acquisition Reference No.242 of 2013 was already tried and adjudicated by the predecessor of the Reference Court on merits on 02.05.2015. In the said judgment, it was observed that the claimants in the impugned judgment and award i.e. present respondents had failed to adduce any evidence and assert their relationship

with the family of the appellants whose land has been acquired. The revenue records were not considered properly. Learned Advocate for the appellant relied on the decision in **Ram Prakash Agarwal and Another Vs. Gopi Krishnan (Dead through LR.) and others, (2013) 11 SCC 296**, in which the Hon'ble Apex Court has summarized the implementation/apportionment under Section 18 and 30 of the Land Acquisition Act. Further, reliance is placed on the decision in **Sunil Radhesham Shukla Vs. State of Maharashtra and others, 2022 (4) ABR 678**, wherein it was observed by this Court that the provisions of Section 30 of the Land Acquisition Act must be invoked within reasonable time. Further, in **Anjanabai w/o Anna Thorat Vs. Dilip Baliram Khandare and others, 2023 DGLS (Bom.) 188**, this Court observed that the job of the Land Acquisition officer is not that of a postman, but requires application of mind as to whether a dispute exists. The learned Reference Court has not considered all these aspects and, therefore, if the stay is not granted and further withdrawal is not stopped, then the applicants would suffer irreparable loss. Further, whatever has been allowed to be withdrawn by the original claimants should be asked to be re-deposited, otherwise it would become impossible to recover the said amount for the applicants.

5. Per contra, learned Advocate for respondent Nos.1 to 6/original claimants, before the Reference Court, strongly opposed the applications

and submitted that the withdrawal is under the orders of the Court after it is shown that the applicants/claimants are entitled to withdrawal, in view of proof of their share. It is absolutely not necessary to stay the proceedings before the Trial Court or stay to the impugned judgment and award, as still the amount is remaining to be withdrawn as per the shares.

6. At the outset, it is to be noted that though the formal order in respect of admitting the first appeal is not passed, yet the record and proceedings has been called. It is the first appeal which deserves to be admitted as of right. In view of the appeal to be admitted, we are required to see whether the impugned judgment and award deserves to be stayed during the pendency of the appeal. The ratio laid down in the cases relied by the learned Advocate for the appellants/original respondents can be considered at the time of final hearing, but the fact remains is that earlier reference i.e. Land Acquisition Reference No.242 of 2013 was initially decided by 8th Joint Civil Judge Senior Division, Aurangabad under Section 30 of the Land Acquisition Act on 02.05.2015. Apportionment was done in respect of applicant No.1 Manohar Kulkarni, applicant No.2 Vinod Kulkarni and applicant No.3 Avinash Kulkarni. They were held to be entitled to get amount of Rs.56,81,000/-, whereas applicant No.4 Tanhabai Kulkarni was held to be entitled to get amount of Rs.42,67,750/-. It appears that the matter was remanded and once again the Reference Court decided the said

application under Section 30 of the Land Acquisition Act i.e. Land Acquisition Reference No.242 of 2013 on 03.12.2018, in which original claimant No.1 is entitled for 1/3rd amount of compensation and original claimant Nos.2 to 6 together are held to be entitled to get 1/3rd amount of compensation, whereas all the respondents were entitled to get in all 1/3rd of amount of compensation. The appeal would take long time to come up for final hearing and disposal, but the thing remains is that if the stay is granted, then everybody would withdraw the amount as per the award which may then lead to the appeal becoming infructuous. No doubt, up till now both the parties have sought withdrawal of the amount by filing various applications, which have been already decided by this Court as well as the Reference Court, still certain amount is remaining and, therefore, that amount deserves to be protected from distribution, till the matter is finally heard and disposed of. Therefore, stay deserves to be granted, however, as regards directions to re-deposit the amount is concerned, it cannot be ordered right now. If at all it is held at the end of the appeal that any one party is not entitled to receive the amount, which has been already allowed to be withdrawn or fraction of the same, then that party can be allowed to ask to deposit the amount in this Court again, but it will be at the time of final hearing only. Certainly, now every party is required to be restrained from withdrawing any amount which is now pending before the learned Reference Court, so that it can be made subject to distribution at

the end of the appeal. Hence, the following order is passed :-

ORDER

- I) Civil Application No.3958 of 2019 stands allowed.
- II) There shall be stay to the impugned judgment and award dated 03.12.2018 passed by the learned 3rd Joint Civil Judge Senior Division, Aurangabad in Land Acquisition Reference No.242 of 2013, till the hearing and final disposal of the appeal.
- III) Civil Application No.14384 of 2019 stands partly allowed.
- IV) The prayer in respect of direction to the respondents in the application i.e. original claimants to re-deposit the amount withdrawn by them stands rejected, however, all the parties to the appeal are hereby restrained from withdrawing any amount, which is now pending before the Trial Court in respect of the present matter, till the final hearing and disposal of the appeal.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm