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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10620 OF 2023

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Ganesh Alias Ganeshan Nee Lakantan ... Petitioner

V/s.

The State of Maharashtra, through
the Special Land Acquisition Officer ... Respondent

Mr. Sachin S. Punde for the petitioner.

Mr. P.G. Sawant, AGP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 30, 2023

P.C.:

1. The petitioner is challenging order passed by the Executing Court permitting the petitioner to withdraw compensation amount subject to furnishing bank guarantee to the extent of 50% of the deposited amount.

2. The petitioner's land was acquired on 21 November 1991. On 19 November 1994, Award was passed. In a reference filed by the petitioner, the Reference Court granted compensation at the rate of Rs.850/- per sq. mtr. On perusal of the judgment of the Reference Court, it appears that the said finding is based on earlier land references and judgment of this Court.

3. The State Government has filed appeal in this Court along with application for condonation of delay on 9 November 2023.

4. According to the calculation furnished by the petitioner, total amount of compensation as on 17 September 2020 comes to Rs.15,54,23,940/-. Out of total amount, the State Government has deposited amount of Rs.5,25,73,756/-. The Executing Court permitted the petitioner to withdraw 50% of the deposited amount on furnishing bank guarantee.

5. Since the total amount of compensation granted by the Reference Court is Rs.15,54,23,940/- and the deposited amount comes approximately to one-third of the total compensation and the Award having been based on earlier Awards passed by the Reference Court, the petitioner has made out a case for permission to withdraw 50% of the amount subject to furnishing undertaking in this Court. Hence, following order:

- a) The impugned order dated 3 January 2023 passed by the 3rd Joint Civil Judge Senior Division, Alibag in Execution Application No.105 of 2020 is set aside to the extent it permits the petitioner to withdraw 50% of the amount on furnishing bank guarantee;
- b) The condition of furnishing bank guarantee is substituted with furnishing undertaking in this Court within four weeks from today;
- c) The undertaking shall contain an averment that in case this Court in appeal reduces the amount of compensation less than the amount withdrawn, the petitioner shall reimburse the State Government with differential amount along with interest at the prevailing bank rate;

6. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)