

SA Pathan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13946 OF 2023

Pandharinath Narayan Kadu & Anr ... Petitioners

V/s.

The State of Maharashtra Through The
Special Land Acquisition ... Respondent

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Mr. Sachin S. Punde, for Petitioner.

Mr. Ajay Chate, AGP a/w Mr. P. P. Pujari, AGP, for State-
Respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 9, 2023

P.C.:

1. By the present writ petition, the petitioners are challenging order passed by the Executing Court rejecting petitioners application for withdrawal of compensation amount.
2. Petitioners land was acquired by Notification dated 21 November 1991 for Navi Mumbai project.
3. On 15 November 1994, the Special Land Acquisition Officer (SLOA) passed an award.
4. On 21 February 2011, the reference Court enhanced the compensation to Rs.850/- per square meter.
5. The State has filed First Appeal No.419 of 2012 which is

admitted.

6. The petitioners have filed Darkhast proceeding in the year 2012.

7. On 25 April 2019, this Court passed order of stay subject to deposit the entire decretal amount within 12 weeks from the date of order. Within the prescribed period, the decretal amount was not deposited and, therefore, the order of stay did not come in operation.

8. On 12 January 2023, the respondent has deposited Rs.56,01,715/- as per the award.

9. On 30 January 2023, the petitioners filed an application for withdrawal of the said amount.

10. The Executing Court rejected the application on the ground that this Court on 25 April 2019 has granted stay and merely, because the amount is not deposited within the prescribed time, the petitioner is not entitled to withdraw the amount.

11. On perusal of the application, it appears that the petitioners in paragraph 3, have referred the judgment of this Court passed in L.A.R. No.665 of 2000, the land acquired for same project. This Court enhanced the compensation of Rs.1,380/- per square meter. According to petitioners, the land acquired for the Navi Mumbai project i.e. Mauje Kopar in Panvel Taluk and Kopar Village, Wahal is a village in CBD Belapur. According to them, both Wahal and Kopar villages have been earmarked for the Navi Mumbai project

and they are on the same highway/state road i.e. Panvel-Uran highway and comparatively petitioners village near CBD Belapur. Therefore, according to them, compensation granted by the Reference Court of Rs.850/- per square meter, is on the lower side and, it is possible that this Court in the first appeal may enhance the compensation to bring them in tune with the judgment in L.A.R. No.665 of 2000.

12. I have considered the judgment in the case of **State of Maharashtra Versus Trimbak Joma Thakur (Deceased through his legal representatives) Dashrath Trimbak Thakur & Ors.**, reported in 2007 (5) Mh.L.J. 187. It appears that in the said judgment, this Court fixed the rate of compensation i.e. Rs.1,725/- per square meter for the land acquired for same project.

13. The Executing Court, therefore, ought to have allowed the petitioners to withdraw the amount. Hence following order:

a) *The application filed below Exhibit 40 in Execution Petition No.70 of 2012 is allowed subject to petitioners filing undertaking to this Court that in case this Court reduce the amount of compensation below Rs.850/- per square meter, the petitioner shall redeposit the withdrawn amount of compensation with the Special Land Acquisition Officer (SLOA) within 8 weeks from the date of judgment along with interest at bank rate prevalent on the relevant time.*

b) The petitioners are permitted to withdraw the amount along with accrued interest, if any.

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

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 10 November 2023. Corrections in paragraph 4 and paragraph 13(a) are shown italicize.