

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3092 OF 2022

1. Santosh S/o. Pralhad Kale,
aged : Major, Occu. : Cultivator,
2. Sagar S/o. Vijay Kale,
aged : Major, Occu. : Cultivator,
R/o. Jawala, Tq. Arni, Dist. Yavatmal.

.... **PETITIONERS.**

// VERSUS //

1. The Project Director, National
Highway Authority of India,
Project Implementation Unit,
Kolhe Layout, Darwha Road,
Yavatmal.
2. The Arbitrator (Additional Collector),
Collector Office Compound,
Yavatmal.
3. The Competent Authority, Special
Land Acquisition Officer, Collector
Office Compound, Yavatmal.

.... **RESPONDENTS.**

Shri M.M.Agnihotri, Advocate a/w Shri Parth L. Sagdeo and Ms Gunjan Kothari, Advocates for Petitioners.

Shri A.A.Kathane, Advocate for Respondent No.1.

Ms Shamsi Haider, A.G.P. for Respondent Nos.2 & 3.

CORAM : ANIL S. KILOR, J.

DATED : APRIL 18, 2023.

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. The present petition is filed for a short relief of modification of the order dated 15/12/2021 passed below Exh.37 by the Principal District Judge, Yavatmal asking the Petitioners to furnish solvent surety of double amount, which has been permitted to be withdrawn by the Petitioners.

4. Shri Agnihotri, learned counsel for the Petitioners submits that the amount which is allowed to be withdrawn by the Petitioners was deposited by National Highway Authority of India in view of the enhancement granted in favour of the Petitioners by the Arbitrator. He submits that there is no justifiable reason given by the Court below asking the Petitioners to furnish solvent security of double amount. He, accordingly, prays for modification of the same by permitting the Petitioners to withdraw the amount, furnishing solvent surety equal to the amount permitted to be withdrawn by the Petitioners.

5. He further submits that the Petitioners is ready to furnish an Undertaking that if he fails in the Arbitration Appeal, he is ready to pay back the amount along with simple interest @ 6% per annum from the date of withdrawal of the amount till the amount is repaid.

6. On the other hand, the learned counsel for the respondent National Highway Authority of India has raised preliminary objection to the maintainability of the present writ petition on the ground that alternate remedy is available way of an appeal. He further submits that the learned Court below ought not to have granted permission to withdraw the amount in view of the provisions of Rule 3-B of the National Highways (Manner of Deposits) Rules, 2019. He, accordingly, prays for dismissal of the present writ petition.

7. The learned A.G.P. for the respondent Nos.2 and 3 supports the impugned order.

8. Considering the nature of the prayer made in the present writ petition and further in view of the well settled principle of law that there is no complete bar to entertain the writ petition, even if the alternate remedy is available, I am of the opinion that the preliminary

objection raised by the respondent No.1 needs to be rejected and the same is accordingly rejected.

9. As far as modification of Clause (i) of the of the impugned order dated 15/12/2021 to the extent of asking the petitioner to furnish solvent security of double amount is concerned, I am of the opinion that in view of the statement made by the learned counsel for the petitioner that the petitioner is ready to furnish solvent security for 50% amount with undertaking that if he fails in the appeal, he will repay the amount along with simple interest @ 6% per annum on the amount directed to be repaid, I am of the opinion that it will protect the interest of National Highways Authority of India.

10. In similar matters, the Supreme Court of India vide judgment dated 01/08/2016 in the case of *Bahubali Ravaji Doshi & Ors ..vs.. State of Maharashtra & Anr.* in **Civil Appeal No.7193/2016** (SPL © 20414/2016) has held thus :

“1. Leave granted.

2. In the nature of the order we propose to pass, it is not necessary to issue notice to the respondents. In all connected matters, this Court has directed the Reference Court to release 50% of the amount deposited by the State without security and the remaining 50% with security to the satisfaction of the Court.

3. That order will govern the case of the appellants as well. The High Court may adopt the same pattern in all the connected cases, so that parties do not have to unnecessarily travel to this Court.
4. In view of the above, the appeal is disposed of. No costs."

11. The Supreme Court of India vide judgment dated 26/09/2018 in the case of *Manish..vs..Godawari Marathawada Irrigation Development Corporation* in **Petition for Special Leave to Appeal (C) No(s). 11760-11761/2018** has held thus :

"This Court, on 16.07.2018, passed the following order:

"No one appears for the respondent, even though served. The Bombay High Court has ordered 60% deposit, pending the Section 37 appeal. We have passed orders stating that since these are money decrees there should be 100% deposit, with the respondent being entitled to withdraw the amount deposited and furnish solvent security to the satisfaction of the High Court.

Accordingly, we set aside the impugned orders dated 19.03.2018 and mandate a 100% deposit be made within a period of eight weeks from today.

The Special Leave Petitions are disposed of accordingly."

Upon being mentioned by learned counsel for the petitioner, the following sentence is incorporated in the aforesaid order before the last line:

"The deposit so made may be allowed to be withdrawn on furnishing solvent security to the satisfaction of the Registrar of the High Court."

12. In the circumstances, I am of the opinion that Clauses (i) & (ii) of the impugned order dated 15/12/2021 needs to be modified.

Accordingly I pass the following order:

- i) The writ petition is allowed.
- ii) The impugned order dated 30/03/2022 passed below Exh.47 by learned Principal District Judge, Yavatmal is hereby quashed and set aside.
- iii) Clauses (i) & (ii) of operative order dated 15th December, 2021 passed below exhibit 37 passed by the learned Principal District Judge, Yavatmal is modified to the extent -
“(i) amount of 50% of Rs.2,52,57,021/- along with accrued interest, if any, be given to the non-applicant no.3 by issuing account payee cheque in his name and
(ii) amount of 50% of Rs.70,57,109/- along with accrued interest, if any, be given to the non-applicant no.4/Sagar Kale by issuing account payee cheque in his name.

That non-applicant nos.3 and 4 shall file an Undertaking to the effect that in case they fails in the appeal, they shall repay the amount as directed by the Court, along with simple interest thereupon @ 6 per annum.”

The Writ Petition is **disposed of** in the above terms. No order as to costs.

JUDGE