



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 2773 OF 2024
IN
FIRST APPEAL NO. 2577 OF 2023

Afsanabee Kasam Kha Pathan and Others ..APPLICANTS
VERSUS
State of Maharashtra and Others ..RESPONDENTS

....
Mr. A.B. Kale, Advocate for applicants
Mrs. S.N. Deshmukh, A.G.P. for respondent nos.1 and 3
Mr. S.G. Bhalerao, Advocate for respondent no.2
....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 12th APRIL, 2024

PER COURT :

1. The applicants (original claimants) have preferred this application for withdrawal of entire amount deposited by the appellant/acquiring body towards the amount under award passed by the Court of Civil Judge, Senior Division, Jalna in Land Acquisition Reference No. 448 of 2011.

2. The land acquisition reference preferred by the applicants was allowed. Paragraph no.74 of the impugned judgment pertains to calculations worked out indicating enhancement of compensation. The same is, therefore, reproduced below :-

“74. Proceeding to calculate enhanced value of the acquiring land-

<i>A]</i>	<i>Market value and rate determined in the case at hand :-</i>	
	<i>i) Market value of 238 R land on the basis of value of fruit bearing trees & house</i>	<i>Rs.48,88,424.23/-</i>
	<i>ii) Market value of 22 R land @ Rs.3,750/- per R</i>	<i>Rs.82,500/-</i>
	<i>iii) Value of forest trees</i>	<i>Rs.1,28,24,378.32/-</i>
	<i>Total Rs. :</i>	<i>Rs.1,77,95,302.55/-</i>
<i>B]</i>	<i>Value determined by S.L.A.O.</i>	<i>Rs.3,75,734/-</i>
<i>C]</i>	<i>Enhanced amount of the value of land (A-B) (1,77,95,302.55 – 3,75,734)</i>	<i>Rs.1,74,19,568.55/-</i>

3. Pursuant to the directions given by this Court, the appellant/acquiring body has deposited entire amount of compensation with this Court. Learned counsel for the applicants would submit that in other appeals arising out of the same acquisition proceedings, the claimants therein have been permitted to withdraw 100% amount deposited by the acquiring body. He places on record copies of the orders dated 19th June, 2023 passed by learned Single Judge in Civil Application No. 7210 of 2023 in First Appeal No. 861 of 2023 and dated 10th October, 2023 passed in Civil Application No. 10384 of 2023 in First Appeal No. 2751 of 2023 with connected applications.

4. Learned counsel for the applicants has already placed on record chart to suggest as to how the acquiring body deals with the land owners discriminatingly. Our attention has been drawn to certain number of Land References and judgments and awards passed therein by the Court of Civil Judge, Senior Division. It was informed to us that the acquiring body has

preferred not to prefer any appeal against some of the judgments and awards granting enhancement in amount of compensation. Learned counsel would submit that the criteria of enhancement in those cases was same/similar.

5. It is learnt that the acquiring body has a Legal Advisor, who is the retired District Judge. The reasons are best known to the head of acquiring body as to why against certain judgments and awards passed, no appeals have been preferred. They must be presumed to know that if no appeal is preferred in similarly placed matters, the claimants in other matters arising out of one and the same acquisition proceedings and having the lands adjacent to the land in the Land References, the judgments passed wherein no appeal has been preferred, are entitled for compensation at the rate awarded by the Reference Court; true, unless some discrepancy or inconsistency is brought to the notice of the appellate Court. Be that as it may.

6. Learned counsel for the acquiring body has strong reservation to allow the application. According to him, interest under Section 28 of the Land Acquisition Act has been awarded from the date of taking possession of the land. According to him, it should have been from the date of award. The period for which excess interest has been granted is of two years. He would further submit that the compensation has been awarded for the land and the trees standing thereon separately. The same is not permissible.

7. Since the interest in the case in hand has been awarded from the date of taking possession of the land and the amount is being huge one, we are inclined to allow withdrawal of amount as under :-

The applicants are allowed to withdraw 80% of the amount deposited by the acquiring body alongwith interest accrued thereon till date. 60% amount be paid as against an undertaking and 20% be paid as against solvent or any kind of security to the satisfaction of Registrar (Judicial) of this Court.

8. Civil application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD