



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 15415 OF 2022
IN FA/2952/2019

Sandipan Venkatrao Patil
VERSUS
The State Of Maharashtra,
Through Its Collector, Latur And Another

WITH

CIVIL APPLICATION NO. 15417 OF 2022
IN FA/2949/2019

WITH

CIVIL APPLICATION NO. 15418 OF 2022
IN FA/2960/2019

WITH

CIVIL APPLICATION NO. 15419 OF 2022
IN FA/2951/2019

WITH

CIVIL APPLICATION NO. 15416 OF 2022
IN FA/2955/2019

Mr.S.P.Tiwari, Advocate h/f. Mr.V.B.Patil, Advocate for applicants
Mr.S.J.Salgare, AGP for respondent no.1 – State
Mr.S.G.Karlekar, Advocate for respondent no.2 – acquiring body

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
DATE : OCTOBER 24, 2024

ORDER :-

These applications are for withdrawal of the balance amount, i.e. 40% of the amount under the award impugned in the First Appeals along with interest accrued thereon, till date.

2. Learned counsel for the applicants would rely on the order of the Apex Court in the case of Ayodhya ETC. Vs. State of Maharashtra and ors. [IA No.138555/2021-Exemption from Filing C/C of the impugned judgment and IA No.138556/2021-Exemption from filing affidavit with SLP(C) No.17232-17237/2021 (IX) and connected matters decided on 08.11.2021] , wherein it has been observed thus:

“learned counsel appearing on behalf of the petitioners has heavily relied upon the orders passed by this Court in Civil Appeal No.2481/2021 and other allied appeals as well as the similar orders passed by this Court with respect to the very acquisition by which this Court in the appeals preferred by the land owners have permitted the land owners to withdraw the amount to the extent of 50% of the enhanced compensation without security and permitting the balance 50% to be released to them on furnishing security to the satisfaction of the Reference Court.

3. Learned counsel for the acquiring body has raised strong objection to permit the applicants to withdraw the entire amount.

According to him, the order of the Apex Court was obtained by practicing fraud. Learned counsel appearing therein had relied on some other matter (Civil Appeal No.2481/2021), claiming the same to have been from one and the same acquisition proceedings; and relying on the same, the Apex Court has been pleased to pass the order relegating the parties to this Court for consideration of the application(s) for withdrawal of the amount. Thereafter, the respondents – land owners, who were similarly placed, have already been permitted to withdraw the entire amount deposited by the acquiring body relying on the order of the Apex Court in Civil Appeal No.2481 of 2021. Learned Single Judge of this Court relying on this Apex Court's order, permitted them to withdraw the entire amount under the award impugned in the appeals preferred by acquiring body.

4. We are conscious of the fact that the order obtained by practicing fraud is nullity and such defence can be raised whenever and wherever occasion arises and before any forum. According to learned counsel for the acquiring body, the order relied on before the Apex Court and the learned single Judge of this court was pertaining to the acquisition of land for storage/percolation tank, at Jadhala village, and not the present one. Learned counsel for the acquiring

body submits that such order, i.e. the order obtained by fraud is non-est in the eye of law, meaning thereby, it is not necessary to initiate a proceeding for getting it set aside. He relied on the Apex Court's judgment in the case of A.V.Papayya Sastry and ors. VS. Govt. of A.P. and others, (2007)4 SCC 221. Learned counsel for the acquiring body places on record a compilation of 42 pages. The same is taken on record.

5. We are conscious of this legal position. It is not known, as to whether it was a mistake on the part of learned counsel in relying on the order passed by the Apex Court in Civil Appeal No.2481 of 2021 or a misrepresentation. The fact remains that after passing the order by the Apex Court, the acquiring body did not appear before the Apex Court for recalling of the said order. On the contrary, learned single Judge passed order permitting the similarly placed land owners to withdraw the entire amount. This fact was also not brought to the notice of the said Court, meaning thereby, factually, the acquiring body has been estopped from raising objection to permit the landowners from withdrawing the amount.

6. In view of the above, we allow the applications in terms of the following order:-

(i) The applicants are permitted to withdraw 50% of the amount which is lying with this court, on furnishing undertaking to the satisfaction of learned Registrar (Judicial) of this Court; and remaining amount, on furnishing solvent security/surety in that regard.

(ii) Needless to mention, the amount be paid with interest accrued thereon.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP