



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
928 CIVIL APPLICATION NO. 2254 OF 2024
IN FA/1526/2012**

**GIRJABAI APPARAO HUDAGE AND ANR
VERSUS
GODAVARI MARATHWADA IRRIGATION DEVELOPMENT CORPORATION
THROUGH ITS EXECUTIVE ENGINEER LATUR AND ANR**

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Advocate for the Applicant : Mr. Sontakke Gajanan K.
APP for Respondent/State : Mrs.Ashelsha S.Deshmukh
Advocate for Respondent No.2 : Mr.S.G.Sangle

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**CORAM : SHAILESH P. BRAHME, J.
DATE : 4th APRIL 2025**

PER COURT :

. Heard both sides.

2. This application is for modification of earlier orders passed by this Court on 21.12.2017 in Civil Application No. 2235 of 2017 and on 18.11.2019 in Civil Application No. 8459 of 2019. Applicants were permitted to withdraw 40% of the amount on furnishing undertaking and 60% amount on furnishing bank guarantee. Applicants filed various applications to dispense with condition of furnishing of bank guarantee for withdrawing 60% amount. However, the request is rejected. Present application is also filed for the similar purpose.

3. Learned counsel for the applicants submits that it is not

possible for the applicants to furnish bank guarantee for withdrawal of 60% of the amount. He relies on order passed by co-ordinate bench of this court in C.A No. 13507 of 2022 in First Appeal No. 1527 of 2012 in permitting to withdraw 60% of the amount on furnishing security and undertaking. Besides that he also placed reliance on the order of Hon'ble Apex Court in C.A No. 1652 of 2013 to buttress the submission that it would be permissible to withdraw the amount only on security.

4. Learned counsel Mr.Sangle would rely on the order dated 28.02.2022 passed in C.A No. 710 of 2022 by which the earlier bench declined to grant relief to the applicants. He would point out order passed on 03.05.2024 denying the relief to the applicants. He would submit that on couple of occasions, the modification were sought but condition of furnishing bank guarantee for withdrawal of 60% amount was maintained.It is further submitted that instead of modifying the order, first appeal be fixed for final hearing.

5. I have gone through orders passed on 21.12.2017,18.11.2019, 28.02.2022 as well as 03.05.2024. Admittedly, the similar request made by the applicants was rejected vide order dated 28.02.2022 and 03.05.2024. Applicants were permitted to withdraw 40% of the amount deposited in this Court by giving undertaking and 60% of amount on furnishing bank guarantee which is still intact.

6. The applicants could not furnish the bank guarantee which is

evident from their pursuit to dispense with condition in question. Hon'ble Supreme Court has already taken a view in Civil Appeal No. 10562 of 2013 for permitting to withdraw the amount of 50% unconditionally and 50% on furnishing the security to the satisfaction of the collector.. The same order has been followed consistently and also in the matter of First appeal no. 1787 of 2010. Applicants are also relying on the order dated 13.10.2023 passed by the co-ordinate bench in C.A No. 13507 of 2022 in First Appeal No. 1527 of 2012. Pertinently, the claimants in that matter were similarly situated and their lands were also acquired for the same project and it was arising out of common judgment. Under these circumstances, I do not find that there is any impediment in permitting the applicants to withdraw the balance amount of 50% on furnishing surety to the satisfaction of Registrar (Judicial) of this Court.

7. Mere rejection of the similar prayer by earlier co-ordinate bench would not operate as *res judicata* for permitting the applicants to withdraw the balance amount. Besides that I am fortified in my view as per order passed by Apex Court as well as co-ordinate bench consistently. In that view of the matter, Civil Application is allowed in terms of prayer Clause (B).

[SHAILESH P BRAHME, J.]

vsj..