

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 18446 OF 2024

Sadanand Bandu Mhatre & Ors ..Petitioners
Versus
Special Land Acquisition Officer, Metro Centre ...Respondents
No.1, Uran, Dist. Raigad & Anr

Mr. Shriram S. Kulkarni, for the Petitioner.
Mr. Tejas Kapre, AGP, for the Respondent-State.
Mr. Janardan Kasar, Deputy Collector, Land Acquisition, Metro Centre-
I, Uran, Dist Raigad.

CORAM: N. J. JAMADAR, J.
DATED : 20th MARCH 2025

P.C.:

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an Order dated 30th July 2024, whereby the petitioners who are the claimants in the Land Acquisition Reference No. 5 of 2014 have been permitted to withdraw the amount deposited by the respondents on furnishing 50% of the amount upon furnishing a Bank Guarantee of Nationalized or Multi-State Cooperative Bank, and the balance 50% on furnishing an indemnity on an affidavit to the effect that, in the event the amount is reduced by the Appellate

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Court, the petitioner would deposit the said amount as and when directed by the Court.

3. Yesterday, when the matter was heard, time was sought by the learned AGP to ascertain whether Appeal has been filed against the Award in question. Today a submission was made that an Appeal has been filed recently. It appears though the award was passed on 24th March 2021, the State has preferred an Appeal against the said Award being First Appeal (Stamp) No. 7656 of 2025 in this month only. Evidently, it appears that the Appeal has been preferred belatedly. It must be accompanied by an application for condonation of delay. It does not seem that stay application has been heard and the Appellate Court has granted stay to the execution and operation of the Award passed by the Reference Court.

4. It is trite, mere filing of an Appeal does not constitute a stay to the execution and operation of the decree, as clarified by the provisions contained in Order XLI Rule 5(1) of the Code of Civil Procedure 1908. The learned Civil Judge was persuaded to pass an order to furnish Bank Guarantee in respect of 50% of the compensation amount apparently for the reason that there is likelihood that in the Appeal, which may be preferred by the respondents, the amount of compensation may be reduced. In order to secure the interest of the State and, eventually the

public exchequer, the learned Civil Judge seems to imposed the condition of furnishing a Bank Guarantee.

5. However, at the same time, the competing interest of the claimants, in whose favour the award has been passed prior to the four years, cannot be lost sight of. Compensation has been awarded as the lands of the claimants have been acquired. The claimants, therefore, cannot be deprived of the compensation awarded to them, by imposing onerous condition of furnishing a Bank Guarantee. It is common knowledge that the Banks insist for security before a Bank Guarantee is furnished. Such an order, in a given situation, may operate as denial of the compensation altogether, as the agriculturist may not be in a position to furnish the Bank Guarantee.

6. In the aforesaid view of the matter, I am inclined to interfere with the order directing furnishing of the Bank Guarantee. The entire amount deserves to be paid to the claimants on furnishing an indemnity on an affidavit thereby undertaking to bring back the said amount in the event it is held that the claimants are not entitled to the said amount or in the Appeal the said amount of compensation is varied or reduced, at such rate of interest as the Court may direct.

7. Since the Appeal has been preferred by the State, with a view to give a fair opportunity to the State, the leaned Civil Judge shall permit

the claimants to withdraw the amount on indemnity, as indicated above, after four weeks.

8. Petition accordingly stands disposed.

[N. J. JAMADAR, J.]