

ORDER BELOW EXH. NO.1

(Date 13/09/2019)

The applicants have filed this application for the withdrawal of 50% amount deposited before the Hon'ble Bombay High Court Bench at Aurangabad. The applicants Adv.Shri.A.G.Patil has argued that, the applicants were the owners and possessors of the land bearing Gut No.246 admeasuring 0 H. 40 R situated at village Ahmedpur, Tq. Ahmedpur, Dist. Latur. The deceased Trambak had filed the reference u/s 18 of the Land Acquisition Act bearing L.A.R.No.728/2008 before this Court being aggrieved by the Award No.2005/LNQ/CR-33 dated 5/6/2008 passed by the Land Acquisition Officer. The said reference was partly allowed by the Jt.Civil Judge Senior Division, Ahmedpur on 31/12/2014.

2. The non-applicants being aggrieved by the Judgment dated 31/12/2014 have preferred the First Appeal No.3316/2017 before the Hon'ble High Court of Judicature of Bombay bench at Aurangabad. The respondent has filed the Civil Application No.7298/2016 for stay to the Judgment and Award dated 31/12/2014 passed by the Jt.Civil Judge Senior Division, Ahmedpur. The Hon'ble High Court vide its order dated 27/09/2017 allow the aforesaid application with a direction that :

“The Civil Applications are allowed and made absolute in terms of prayer clause (B) on the condition that the applicant deposits the entire awarded sum with interest in this Court within twelve weeks from today without fail.”

3. After depositing the amount the applicants have

preferred the Civil Application No.7117/2018 for the withdrawal of amount and the Hon'ble High Court has passed the order on 26/06/2018 as below.

“The applicants are permitted to withdraw 25% of the amount deposited by the appellants in this Court, subject to submitting an undertaking in this Court that in case, the appellants succeed in appeals, the applicants would return back the amount withdrawn by them, to the appellants.”

4. He has further argued that, the non-applicants have preferred the Special Leave Petition (C) No.5075/2018 before the Hon'ble Apex Court against the order dated 27/09/2017 passed by the Hon'ble Bombay High Court Bench at Aurangabad in Civil Application No.7298/2016. The Hon'ble Apex Court has disposed of the above said petition on 03/12/2018 and observed that :

“The respondents are now permitted to withdraw 50% of the amount which the petitioner has deposited after furnishing adequate security in terms of our order dated 23/03/2018 passed in SLP (C) No.27306-27325 of 2017 titled as Chandra Maroti Pitale & Anr. etc. Vs. State of Maharashtra & Anr. etc. and remaining can be withdraw without security.”

5. The Hon'ble Apex Court has passed the order in Civil Appeal Nos.3192-3211 of 2018 arising out of SLP (C) No.27306-27325 of 2017 titled as Chandra Maroti Pitale & Anr. etc. Vs. State of Maharashtra & Anr. etc. on 23/03/2018 that :

“The present appeals are disposed of by directing that 50% of enhanced compensation granted to the appellants shall be released without security,

whereas balance of 50% shall be released to them on furnishing security to the satisfaction of the Reference Court.”

6. He has further argued that, the applicants have filed the Special Leave (Civil No.30071-30083 of 2018) before the Hon'ble Apex Court against the order dated 26/06/2018 passed by the Hon'ble Bombay High Court bench at Aurangabad passed in the Civil Application No.7117/2018. The Hon'ble Apex Court has passed the order and disposed of the above leave petitions on 18/01/2019 and in the said order the Hon'ble Apex Court has observed that :

“In view of the order dated 11th September, 2015 passed in the Civil Appeal Nos.7070-7071 of 2015 (Baburao S/o. Govindrao Gaikwad and Anr. Vs. The State of Maharashtra and Ors.), the present appeals are also disposed of by directing that 50% of the enhanced compensation granted to the appellants shall be released without security whereas, balance of 50% shall be released to them on furnishing security to the satisfaction of the Reference Court.”

7. He has further argued that, the applicants have good case on merits and hope to succeed in the said matter. He has further prayed that, the applicant be allowed to withdraw the 50% amount deposited by the non-applicants before the Hon'ble High Court along with interest accrued thereon.

8. The learned A.G.P. Shri.M.K.Patil on behalf of non-applicant nos.1 and 2 has argued that, the appeal is pending before the Hon'ble Bombay High Court, Bench at Aurangabad. He has

further argued that, the deposited amount be released in favour of the applicant on furnishing the bank guarantee.

9. On behalf of non-applicant no.3 Adv.Shri.G.M.Kale has argued that, the appeal is pending before the Hon'ble High Court. As per the order of the Hon'ble Apex Court 50% of amount is to be paid to the applicant and for the remaining 50% of amount the applicant has to furnish security. He has further argued that, the applicant be directed to furnish the Nationalized Bank Guarantee or solvent security on the remaining 50% amount.

10. Considering all the above mentioned orders of the Hon'ble Apex Court, it would be just and proper to allow the application of the applicant for the withdrawal of 50% amount which was deposited by the non-applicants before the Hon'ble Bombay High Court Bench at Aurangabad. Hence, I proceed to pass the following order -

O R D E R

As per the orders of the Hon'ble Apex Court in the SLP (C) No.5075/2018 and SLP (C) Nos.30071-30083/2018 dated 03/12/2018 and dt.18/01/2019 respectively, the applicant is permitted to withdraw 50% amount which was deposited by the non-applicants before the Hon'ble Bombay High Court Bench at Aurangabad on furnishing the Bank Guarantee or solvent surety of the like amount.

Ahmedpur.
Date :- 13/09/2019

(A. R. Surve)
Civil Judge Sr.Division,
Ahmedpur.

Certified that PDF copy of Order supra is word-to-word identical to the original Order.

Name of Stenographer	: A.S.Kodgire
Dictated on	: 13.09.2019
Checked on	: 13.09.2019
Signed on	: 13.09.2019
Uploaded on	: 13.09.2019