

2022 LiveLaw (SC) 827

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

DINESH MAHESHWARI; J., SUDHANSHU DHULIA; J.

SEPTEMBER 30, 2022

CIVIL APPEAL NO. 7062 OF 2022 (ARISING OUT OF SLP (C) NO. 1939 OF 2019)

KAZI MOINUDDIN KAZI BASHIRODDIN & ORS.

versus

THE MAHARASHTRA TOURISM DEVELOPMENT CORPORATION, THROUGH ITS SENIOR REGIONAL MANAGER REGIONAL OFFICE, MTDC, AURANGABAD, MAHARASHTRA & ANR.

Land Acquisition - When the matter relates to the payment of amount of compensation to the land losers, if at all two views are possible, the view that advances the cause of justice is always to be preferred rather than the other view, which may draw its strength only from technicalities. (Para 14)

(Arising out of impugned final judgment and order dated 03-12-2018 in CA No. 7037/2018 passed by the High Court of Judicature at Bombay at Aurangabad)

For Petitioner(s) Mr. Ashutosh Dubey, AOR Mr. Abhishek Chauhan, Adv. Mr. H.B. Dubey, Adv. Ms. Rajshri A. Dubey, Adv. Mr. Amit P. Shahi, Adv. Mr. Amit Kumar, Adv. Mr. Manish Dhingra, Adv. Ms. Ramya Khanna, Adv.

For Respondent(s) Mr. Suhas Kadam, Adv. M/S. Black & White Solicitors, AOR

J U D G M E N T

DINESH MAHESHWARI, J.

Leave granted.

2. The appellants herein are respondents in First Appeal No. 1673 of 2017 (First Appeal St. No. 37304 of 2016) pending in the High Court of Judicature at Bombay, Bench at Aurangabad. They have preferred this appeal for being aggrieved of the order dated 03.12.2018, as passed in Civil Application No. 7037 of 2018 moved in the said appeal, whereby the High Court has allowed the applicant-Maharashtra Tourism Development Corporation ('MTDC'-respondent No.1)¹ to withdraw an amount of Rs. 1,37,50,547/-, which was deposited by them on 20.03.2018 towards enhanced amount of compensation.

3. Put in a nutshell, the case of the applicant-MTDC before the High Court had been that 50% of the amount of compensation awarded by the Reference Court had already been deposited by them on 20.01.2017 in terms of the order passed by the High Court on 14.12.2016; and the said order dated 14.12.2016 having not been altered by any Court, they had mistakenly deposited further an amount of Rs. 1,37,50,547/- and were entitled to withdraw the same.

3.1. On the other hand, the present appellants asserted before the High Court that in terms of the order dated 29.01.2018 passed by this Court in Civil Appeal No. 1348 of 2018², the said order dated 14.12.2016 stood modified because this Court had directed release of 50% of the amount of compensation with security and remaining 50% without security.

¹ Hereinafter, for continuity and uniformity, the respondent No. 1 is referred to as 'the applicant-MTDC'.

² Arising out of SLP (C) No. 19818 of 2017.

3.2. In the impugned order dated 03.12.2018, the High Court accepted the submissions made on behalf of the applicant-MTDC and allowed them to withdraw the aforesaid amount deposited on 20.03.2018.

4. For what has been indicated hereinabove, the basic question arising for consideration in this appeal is the purport of this Court's order dated 29.01.2018 and its effect on the order dated 14.12.2016 passed by the High Court. The background aspects of the matter could be referred only to the extent relevant for determination of the question so arising.

4.1. On 10.07.2000, a Notification under Section 4 of the Land Acquisition Act, 1894 ('the Act of 1894') was issued for acquisition of the land comprising Gut Nos. 90 & 91 of Village Pimpaldari, Taluk Sillod, District Aurangabad, for the purpose of Ajanta Verul Development Project. The Notification under Section 6 was thereafter issued on 21.06.2001. In the acquisition proceedings so undertaken, ultimately, an award was made by the Special Land Acquisition Officer ('SLAO') on 21.06.2004. The appellants being dissatisfied by the amount of compensation awarded by the SLAO, got the matter referred under Section 18 of the Act of 1894 for enhancement. The Reference Court dealt with the matter in L.A.R. No. 101 of 2005 and while partly allowing the same, awarded enhanced amount of compensation to the appellants. Being aggrieved by the enhancement so made, the applicant-MTDC preferred the aforesaid appeal bearing No. 1673 of 2017 (First Appeal St. No. 37304 of 2016).

4.2. In the said appeal, while issuing notice on the interlocutory applications moved by the applicant-MTDC, the High Court ordered stay over execution of the award subject to the condition that the applicant shall deposit 50% of the award amount along with interest accrued thereon within twelve weeks. This order dated 14.12.2016, on its material contents, reads as under: -

"1. Issue notice to the respondents in both civil applications for delay and stay, returnable on 25.01.2017.

2. The execution of the award impugned in the present appeal shall stand stayed subject to deposit of the 50% of the amount under the impugned award along with interest accrued thereon in this court by the acquiring body within twelve weeks from the date of this order."

4.3. In compliance of the order so passed by the High Court, the applicant-MTDC deposited 50% of the award amount in the High Court. Thereafter, the present appellants filed Civil Application No. 3432 of 2017 for withdrawal of the amount so deposited by the applicant-MTDC. However, on 07.06.2017, the High Court ordered on the application so moved by the present appellants that they would be entitled to withdraw 50% of the deposited amount subject to filing of an undertaking to redeposit, if so directed in future. The balance amount was ordered to be invested in a fixed deposit. This order dated 07.06.2017, on its material contents, reads as under: -

"1. The application is partly allowed. The applicants are permitted to withdraw 50 per cent of the deposited amount on submitting an undertaking that in the event any adverse order is passed, the applicants will redeposit the said amount within four months of passing such order. The balance amount shall be invested in a Fixed Deposit Receipt in any nationalized Bank initially for a period of two years, and if required, for further period till disposal of the appeal. Civil Application stands disposed of."

4.4. Thus, at the given stage, the resultant position was that pursuant to the order dated 14.12.2016, only 50% of the amount awarded by the Reference Court was to be deposited by the acquiring agency and even out of this amount, only 50% was allowed to be withdrawn by the claimants/appellants. Thus, in effect, the appellants were to get in hand only 25% of the compensation amount awarded by the Reference Court.

4.5. Against the aforesaid order dated 07.06.2017, the claimants/appellants approached this Court by way of S.L.P. (C) No. 19818 of 2017 leading to Civil Appeal No. 1348 of 2018. When the said appeal came up for consideration before this Court, it was not disputed by the parties that in a similar matter, being the case of **Wajidmiya Abdul Raheman Shaikh & Ors. v. Maharashtra Ind. Dev. Cor. & Ors.**, Civil Appeal No. 8056 of 2013, the High Court order staying payment of the enhanced amount of compensation had been modified to the effect that 50% of the enhanced amount of compensation would be released without security and the balance 50% would be released on furnishing security. There being no dispute about applicability of the order so passed by this Court in Civil Appeal No. 8056 of 2013 (supra), the appeal filed by the present appellants was also allowed in the same terms and the impugned order of the High Court was modified. The order dated 29.01.2018 passed by this Court in disposal of the said appeal of the appellants, Civil Appeal No. 1348 of 2018, on its material contents, reads as under: -

“Heard learned counsel for the parties.

Leave granted.

It is not disputed that in a similar matter being Wajidmiya Abdul Raheman Shaikh & Ors. Vs. Maharashtra Ind. Dev. Corpn. & Ors. (Civil Appeal No. 8056 of 2013 etc. etc.), the High Court order staying payment of enhanced compensation has been modified to the effect that 50% of the enhanced compensation be released without security and the balance of 50% to be released on furnishing security.

Accordingly, the Civil Appeal is allowed in the same terms and the impugned order of the High Court is modified.”

4.6. After passing of the aforesaid order dated 29.01.2018 by this Court, the applicant-MTDC deposited the said amount of Rs. 1,37,50,547/- in the High Court on 20.03.2018. However, thereafter, they moved the said application before the High Court seeking to withdraw the amount so deposited with the submissions that such a deposit was made per mistake. It was submitted that in the order dated 29.01.2018, the Supreme Court had not directed the applicant-MTDC to deposit the entire compensation amount awarded by the Reference Court and the directions in the order dated 29.01.2018 had only been in respect of the amount which was deposited in the High Court before passing of the order by the Supreme Court.

4.7. The High Court accepted the submissions so made by the applicant-MTDC while observing that the order dated 29.01.2018 passed by this Court could not be read as a permission to the claimants to withdraw the entire compensation amount awarded by the Reference Court. The High Court, therefore, allowed the applicant-MTDC to withdraw the amount deposited on 20.03.2018 while observing, *inter alia*, as under: -

“4. Undisputedly, the applicant MTDC filed this appeal challenging the judgment and award, passed by 2nd Joint Civil Judge, Senior Division, Aurangabad, in Land Acquisition Reference No. 101 of 2005. In this appeal, the MTDC filed Civil Application No. 16090 of 2016 with Civil Application No. 16091 of 2016 for condonation of delay and stay. On 14.12.2016, this Court passed stay order subject to deposit of 50 per cent of compensation amount awarded by the Reference Court, with accrued interest thereon.

5. In obedience of this order, the MTDC deposited 50 per cent amount of compensation in this Court. Thereafter original claimants filed Civil Application No. 3432 of 2017 for withdrawal of said 50 per cent deposited compensation. On 7.6.2017, this Court allowed the claimants to withdraw 50 per cent amount out of deposited 50 per cent compensation subject to filing of undertaking to deposit the withdrawn amount if directed by this Court in future. The balance amount was directed to be

invested in fixed deposit. Against that order, the claimants approached Supreme Court and in Civil Appeal No. 1348 of 2018 on 29.1.2018, the Supreme Court modified the order passed by this Court and released 50 per cent of enhanced compensation without security and balance 50 per cent was released on furnishing security.

6. If the sequence of above events is considered, it is crystalclear that the order passed by Apex Court, dated 29.1.2018 pertains to 50 per cent amount deposited by appellant MTDC in accordance with the direction given by this Court on 14.12.2016 in Civil Application No. 16090 of 2016. Till passing of order by Supreme Court on 29.1.2018, only 50 per cent amount out of awarded amount was deposited and lying in this Court. Even in the order, dated 29.1.2018, the Supreme Court has not directed the appellant MTDC to deposit the entire compensation amount awarded by the Reference Court. Therefore, the direction given by Apex Court in the order, dated 29.1.2018 is in respect of amount which was deposited in this Court till 29.1.2018. This order is not applicable to the amount which is inadvertently deposited by MTDC on 20.3.2018 i.e. after passing order by the Supreme Court on 29.1.2018. Therefore, by taking benefit of order of the Supreme Court, the claimant cannot withdraw the amount deposited by MTDC inadvertently. The order dated 29.1.2018 does not show exercise of jurisdiction under Article 142 of the Constitution of India as argued. Thus, the inadvertently deposited amount needs to be refunded to the applicant MTDC, as that amount was deposited in this Court without direction of this Court as well as without direction given by Supreme Court. The order, dated 29.1.2018, passed by Supreme Court cannot be read as permission to withdraw entire compensation awarded by the Reference Court in Land Acquisition Reference No. 101 of 2005. Therefore, Application filed by the applicant/appellant MTDC to withdraw the amount of Rs. 1,37,50,547/ deposited inadvertently in this Court deserves to be allowed.

7. Accordingly, applicant MTDC is permitted to withdraw amount of Rs.1,37,50,547/ (Rs.One Crore Thirty Seven Lakh Fifty Thousand Five Hundred Forty Seven Only) deposited on 20.3.2018.

8. Civil Application is disposed of accordingly.”

5. While questioning the order so passed by the High Court, learned counsel for the appellants has referred to various orders passed by this Court from time to time in similar matters involving akin issues, including the aforesaid relied upon order dated 10.09.2013 in Civil Appeal No. 8056 of 2013. The learned counsel has contended that the appellants, who lost their land way back in the year 2001, could ultimately receive the amount of compensation only in terms of the orders passed by this Court on 29.01.2018 and they cannot be deprived of the same on the hyper-technical submissions sought to be made by the applicant-MTDC, which had wrongly been accepted by the High Court.

5.1. Learned counsel for the appellants has further contended that reliance on the order dated 14.12.2016 of the High Court is erroneous inasmuch as it was only an interlocutory order and the same was superseded by the order dated 29.01.2018 passed by this Court, specifically permitting the appellants to withdraw 50% of the enhanced compensation amount without security and remaining 50% with security. Learned counsel has referred to various other orders passed in similar matters and has submitted that this Court has consistently taken the view that the persons who are deprived of their land due to acquisition should be paid/disbursed 50% of the enhanced amount of compensation without security and the remaining 50% with security during the pendency of appeal by the acquiring agency. The same order was passed between the parties in the present matter by this Court on 29.01.2018 and its full and practical effect cannot be whittled down merely by reference to a previous order of the High Court.

6. *Per contra*, learned counsel for the respondent No. 1 (applicant-MTDC) has strenuously argued that the controversy which reached this Court earlier was only with regard to the release of 50% of the amount of compensation awarded by the Reference

Court, which had already been deposited by the applicant-MTDC on 20.01.2017. This deposit was made in compliance of the order dated 14.12.2016, which always remained operative, for having neither been challenged nor modified.

6.1. As regards the order dated 29.01.2018, it has been argued that in manner and effect, this Court merely directed release of 50% amount with security and 50% amount without security while following the order passed in a different matter, i.e., Civil Appeal No. 8056 of 2013 but, without modifying the earlier order dated 14.12.2016 in the present case. According to the learned counsel, the implication of the order of this Court had only been that 50% of the deposited amount was to be released with security and 50% without security. It has also been contended that though no further deposit was required to be made by the applicant-MTDC, but even if such a deposit was made at the instance of the appellants in abundant caution, the excessively deposited amount could not have been withdrawn or received by the appellants. Learned counsel has submitted that the appellants were trying to take advantage of a fiction which might have been created because of the order dated 29.01.2018 but, if the said order is read together with the orders dated 14.12.2016 and 07.06.2017, the picture would be crystal clear that the appellants were entitled to get only 50% of the total amount of enhanced compensation, where they could receive half by furnishing security and other half without security, but there was neither any obligation on the applicant-MTDC to deposit whole of the amount of compensation nor there was any corresponding entitlement of the appellants to withdraw the same by taking half on security and the other half without security. Learned counsel had relied upon an order by a 3-Judge Bench of this Court in the case of **Nayara Energy Limited v. The State of Gujarat & Ors.**, Civil Appeal Nos. 4102-4103 of 2020 arising from S.L.P. (Civil) Nos. 14215-14216 of 2020 and particularly the following passage therein: -

“6.we are of the opinion that if the original claimants are permitted to withdraw 25% of the enhanced amount of compensation, as awarded by the learned Reference Court, together with proportionate interest and cost, without furnishing any security and the balance 75% of the enhanced amount of compensation, together with proportionate cost and interest, as awarded by the learned Reference Court is permitted to be invested in a fixed deposit in any nationalised bank with cumulative interest, it will meet the end of justice and take care of the interest of both the parties.”

7. We have given thoughtful consideration to the rival submissions and have thoroughly examined the material placed on record.

8. A somewhat peculiar situation of the present case has its genesis in the fact that on 14.12.2016, the High Court had ordered stay over execution of the award dated 19.03.2016 on the condition of the applicant-MTDC depositing 50% of the amount of compensation along with interest accrued. On 01.02.2017 the applicant-MTDC indeed deposited the said 50% of the amount of compensation but, by the order dated 07.06.2017, the High Court permitted withdrawal only of 50% of the said deposited amount (which itself was 50% of the compensation amount) on an undertaking and the remaining amount was ordered to be placed in fixed deposit. This order was in challenge in this Court in Civil Appeal No. 1348 of 2018 wherein this Court passed the order dated 29.01.2018, as reproduced hereinbefore.

9. At the first blush, it may appear that when only the said order 07.06.2017 (disbursal order) was in challenge before this Court and the principal order dated 14.12.2016 (stay order requiring only 50% deposit) was not in question, the order passed by this Court correlates only with the disbursal order and thereby, the appellants would be entitled to withdraw 50% of the deposited amount without security and balance 50% on furnishing security. However, a close look at the order 29.01.2018 and the relied upon order therein bring to fore

a situation entirely different; and it is difficult to accept the submissions of the applicant-MTDC as also the observations of the High Court that this Court's order related only to the deposited amount of compensation and not to the entire enhanced amount of compensation.

10. As noticed, the said order dated 29.01.2018 was passed by this Court without raising of any dispute on the part of any of the parties as regards applicability of the earlier decision in Civil Appeal No. 8056 of 2013, i.e., the case of **Wajidmiya Abdul Raheman Shaikh** (supra). The appeal filed by the present appellants was allowed "in same terms" and the impugned order of the High Court was "modified". To appreciate the implication of the expression "in the same terms", we may fruitfully refer to the order dated 10.09.2013 passed by this Court in Civil Appeal No. 8056 of 2013. In the said order, this Court, after condoning delay and granting leave, took note of the fact that the appeals were directed against interim orders passed by the High Court of Judicature at Bombay, Bench at Aurangabad in various civil applications moved in respective civil appeals; and while observing that the High Court had rejected the reasonable prayer made by the appellant, this Court proceeded to dispose of the case with the following observations and directions: -

"4. Having heard the learned counsel for the parties to the *lis*, we are of the opinion that the prayer made by the appellants requires to be accepted and granted. Accordingly, we pass the following order- "We direct that the 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 Collector"."

10.1. Several other orders passed by this Court in different matters have also been placed before us for perusal by the learned counsel for the appellants. The common thread running through all the orders aforesaid is that this Court issued similar directions, of allowing 50% of enhanced amount of compensation to be released without security and balance 50% to be released on furnishing security. Instead of multiplying the reference to several orders passed by this Court, for the present purpose, suffice would be to refer to the order dated 22.11.2019 in Civil Appeal No. 8931 of 2019 [arising out of S.L.P. (C) No. 15491 of 2017] wherein, while dealing with a nearly akin situation that the High Court had permitted withdrawal of 25% of the compensation amount without security and 25% on furnishing solvent security, this Court referred to the order passed in Civil Appeal No. 1348 of 2018 i.e., the case of the present appellants and allowed the appeal in the same terms. The relevant part of the said order dated 22.11.2019 reads as under: -

"Heard learned counsel for the parties.

Leave granted.

The appellant assails the interim order of the High Court in a Land Acquisition Appeal preferred by the State, permitting withdrawal of 25% of the Compensation amount without security and 25% on furnishing solvent surety by the appellant.

In view of our several orders on this issue, reference may be made to one of them in Civil Appeal No. 1348 of 2018, where the following order has been passed:

"It is not disputed that in a similar matter being *Wajidmiya Abdul Raheman Shaikh & Ors. Vs. Maharashtra Indu. Dev. Corpn. & Ors.* (Civil Appeal No. 8056 of 2013 etc. etc.), the High Court order staying payment of enhanced compensation has been modified to the effect that 50% of the enhanced compensation be released without security and the balance of 50% to be released on furnishing security."

The civil appeal is allowed on the above terms."

11. So far as the decision of this Court in Civil Appeal No. 4102-4103 of 2020 is concerned, therein the High Court had stayed the execution of award passed by the Reference Court on the condition of the acquiring agency depositing 80% of the awarded amount alongwith proportionate cost and interest and thereafter, the High Court directed that 50% of the deposited amount be placed in a cumulative fixed deposit for a period of five years and the balance was allowed to be withdrawn by the claimants. The High Court also allowed the claimants to withdraw 50% of the accrued interest on fixed deposit. Taking note of the given fact situation and the fact that the claimants were not in a position to furnish any security, this Court issued directions for depositing entire awarded amount before the High Court and then, allowed 25% of the deposited amount to be withdrawn by the claimants without security and the remaining 75% was ordered to be placed in a cumulative fixed deposit for a period of five years. The said case essentially proceeded on its own facts and it cannot be held that this Court has laid down any inflexible rule that in every such case, the claimants would be entitled to withdraw only 25% of the awarded amount of compensation.

12. Apart from the above, fact of the matter remains that in the present case, specific order has been passed by this Court in terms of the order passed in the case of **Wajidmiya Abdul Raheman Shaikh** (supra). The order passed by this Court had been explicit that the order of the High Court staying the payment of enhanced compensation stood modified to the effect that 50% of the enhanced amount of compensation was to be released without security and the balance 50% on furnishing security. Even if the initial stay order dated 14.12.2016 had not, as such, been challenged before this Court, the disbursal order dated 07.06.2017 had essentially been in continuity thereof and while considering challenge to the disbursal order, nothing prevented this Court from modifying the principal stay order itself.

13. In our view, the order dated 29.01.2018 passed by this Court in Civil Appeal No. 1348 of 2018 is required to be interpreted and applied on its substance rather than technicalities. The intent of this Court in **Wajidmiya Abdul Raheman Shaikh** (supra) had been clear that the entire amount of enhanced compensation should reach the claimants while they would be obliged to furnish security to the extent of 50% thereof. When the same terms were applied to the present case, the attempt on the part of the applicant-MTDC to fall back again and again on the order dated 14.12.2016 could not have been countenanced. Unfortunately, the High Court has fallen in such an error by accepting the hyper technical submissions on behalf of the applicant-MTDC. In fact, the applicant-MTDC had correctly understood the meaning, purport and effect of the order dated 29.01.2018 in the first instance when the remaining 50% of the amount of compensation was deposited on 20.03.2018. Their second thought and late attempt to withdraw the said amount, was required to be rejected.

14. Before closing this matter, we are impelled to observe that the orders passed by the Courts, and particularly by this Court, are required to be understood on their pith and substance while avoiding an approach of technicalities. Moreover, when the matter relates to the payment of amount of compensation to the land losers, if at all two views are possible, the view that advances the cause of justice is always to be preferred rather than the other view, which may draw its strength only from technicalities. We say no more for the present.

15. Accordingly, and in view of the above, this appeal succeeds and is allowed; the impugned order dated 03.12.2018 is set aside and the application filed by the applicant-MTDC for withdrawal of deposited amount of compensation stands rejected. No costs.