

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.14409 OF 2019
IN
FIRST APPEAL NO.1385 OF 2019
(Executive Engineer, M.I.W., Jalgaon Vs. Laxmikant Vitthal Mahajan and
others)
WITH
CIVIL APPLICATION NO.14413 OF 2019
IN
FIRST APPEAL NO.1384 OF 2019
(Executive Engineer, M.I.W., Jalgaon Vs. Ashok Tilak Patil and another)
WITH
CIVIL APPLICATION NO.14414 OF 2019
IN
FIRST APPEAL NO.1383 OF 2019
WITH
CIVIL APPLICATION NO.14416 OF 2019
IN
FIRST APPEAL NO.1381 OF 2019
(Executive Engineer, M.I.W., Jalgaon Vs. Harsing Ramsing Rathod and
another)
WITH
CIVIL APPLICATION NO.14418 OF 2019
IN
FIRST APPEAL NO.1382 OF 2019
(Executive Engineer, M.I.W., Jalgaon Vs. Laxmibai Shamrao Patil and
another)
WITH
CIVIL APPLICATION NO.14420 OF 2019
IN
FIRST APPEAL NO.1386 OF 2019
(Executive Engineer, M.I.W., Jalgaon Vs. Damu Govinda Patil and another)

AND

CIVIL APPLICATION NO.5219 OF 2019
IN
FIRST APPEAL NO.1435 OF 2019
(Chandrabhagabai Kashinath J/M Ravindra Kashinath Balal Vs. The
Executive Engineer, M.I.W., Jalgaon and another)
WITH
CIVIL APPLICATION NO.5220 OF 2019

IN
FIRST APPEAL NO.1437 OF 2019
(Rajesh Omprakash Agrawal Vs. The Executive Engineer, M.I.W., Jalgaon and
another)
WITH
CIVIL APPLICATION NO.5222 OF 2019
IN
FIRST APPEAL NO.1444 OF 2019
(Nandkor Bhimsing Patil Vs. The Executive Engineer, M.I.W., Jalgaon and
another)
WITH
CIVIL APPLICATION NO.5223 OF 2019
IN
FIRST APPEAL NO.1436 OF 2019
(Omprakash Shivilal Agrawal Vs. The Executive Engineer, M.I.W., Jalgaon and
another)
WITH
CIVIL APPLICATION NO.5225 OF 2019
IN
FIRST APPEAL (ST.) NO.6416 OF 2018
(Gitabai Shivilal Agrawal (Died) through L.Rs. Rajesh Vs. The Executive
Engineer, M.I.W., Jalgaon and another)
WITH
CIVIL APPLICATION NO.5229 OF 2019
IN
FIRST APPEAL NO.1443 OF 2019
(Vasant Damodar Patil Vs. The Executive Engineer, M.I.W., Jalgaon and
another)
WITH
CIVIL APPLICATION NO.5230 OF 2019
IN
FIRST APPEAL NO.1442 OF 2019
(Narayan Dagdu Pardeshi and another Vs. The Executive Engineer, M.I.W.,
Jalgaon and another)
WITH
CIVIL APPLICATION NO.5233 OF 2019
IN
FIRST APPEAL NO.1439 OF 2019
(Kailash Puna Marathe Vs. The Executive Engineer, M.I.W., Jalgaon and
another)
WITH
CIVIL APPLICATION NO.5234 OF 2019
IN
FIRST APPEAL NO.1441 OF 2019
(Nita Omprakash Agrawal S/M Omprakash Vs. The Executive Engineer,

M.I.W., Jalgaon and another)
WITH
CIVIL APPLICATION NO.5235 OF 2019
IN
FIRST APPEAL NO.1450 OF 2019
(Premchand Shivilal Agrawal Vs. The Executive Engineer, M.I.W., Jalgaon and
another)
WITH
CIVIL APPLICATION NO.5236 OF 2019
IN
FIRST APPEAL NO.1445 OF 2019
(Omprakash Shivilal Agrawal Vs. The Executive Engineer, M.I.W., Jalgaon and
another)
WITH
CIVIL APPLICATION NO.5237 OF 2019
IN
FIRST APPEAL NO.1434 OF 2019
(Dattu Govind Marathe Vs. The Executive Engineer, M.I.W., Jalgaon and
another)
WITH
CIVIL APPLICATION NO.5238 OF 2019
IN
FIRST APPEAL NO.1446 OF 2019
(Omprakash Shivilal Agrawal Vs. The Executive Engineer, M.I.W., Jalgaon and
another)
WITH
CIVIL APPLICATION NO.5239 OF 2019
IN
FIRST APPEAL NO.1438 OF 2019
(Dinesh Omprakash Agrawal S/M Omprakash Vs. The Executive Engineer,
M.I.W., Jalgaon and another)

Mrs. Vaishali D. Patil-Jadhav, Advocate for the applicant – Acquiring
 Body in Civil Applications for recalling of the orders and
 for respondent No.1 in Civil Applications for withdrawal of amount
 Mr. Ajeet B. Kale, Advocate for respondent No.1 in Civil
 Applications for recalling of the orders and
 for the applicants in Civil Applications for withdrawal of amount
 Mr. S.P. Deshmukh, A.G.P. for respondent Nos.2 and 3/State

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 11.12.2019
PRONOUNCED ON : 13.12.2019

ORDER :

These are the applications in some of the First Appeals preferred by the Acquiring Body wherein the original claimants have been allowed to withdraw 75% of the amount of compensation, deposited by it in this Court while preferring the appeals, by the order dated 12.04.2019. Now the Acquiring Body has preferred applications in six of these matters seeking recalling of the orders dated 12.04.2019 passed in Civil Application No.4293/2019 and connected matters.

2. The reason given in these applications and as is submitted by the learned Advocate is that in an earlier land reference arising from the same notification, First Appeal No.2536/2015 was preferred by the claimants. It was allowed by this Court. In the references in the present matters, valuation of the trees was fixed by relying upon the judgment of this Court in First Appeal No.2536/2015. The Acquiring Body had challenged the decision of this Court in First Appeal No.2536/2015 before the Supreme Court in Civil Appeal No. 5125 of 2019 [arising out of SLP (Civil) No.11433/2019]. The Supreme Court, by its judgment dated 01.07.2019, has quashed and set aside the judgment of the High Court in that First Appeal and remanded it to this Court for decision afresh. Thus, according to the learned Advocate for the Acquiring Body, the very basis for the Reference Court to fix valuation of the trees in view of the judgment in First Appeal No.2536/2015 having been set

at naught, the claimants cannot be allowed to withdraw the amount of compensation deposited in this Court and therefore, the orders passed by this Court on 12.04.2019 be recalled.

3. The learned Advocate for the Acquiring Body further submits that even the applications by the other claimants in various other sister matters seeking withdrawal of money may not be allowed in view of such changed circumstances.

4. The learned Advocate for the claimants opposes these applications for recalling of the order dated 12.04.2019. He submits that the Acquiring Body has merely deposited 75% of the compensation and not the entire compensation determined by the Reference Court and consequently, to the extent of remaining 25% amount, its interest has been already protected.

5. The learned Advocate would further submit that though it is a matter of record that the Reference Court has determined valuation relying upon the judgment of this Court in First Appeal No.2536/2015, which has now been set aside by the Supreme Court, it does not show that the scenario has undergone a sea-change. The First Appeal has merely been remitted to this Court for decision afresh. Besides, the fact remains that the lands of the claimants have been acquired long back and they are being deprived of their legitimate claim to have just compensation for years together. They may not be allowed to withdraw the entire amount of compensation which is merely

75% of what has been determined by the Reference Court, but not paying them anything at all would put them to a greater hardship, particularly when their lands have been acquired by way of compulsory acquisition resorting to the provisions of the Land Acquisition Act.

6. The learned Advocate for the claimants would further submit that in fact, when the Reference Court has for plausible reasons determined the compensation, the claimants are entitled to reap the benefits to some extent atleast.

7. I have carefully gone through the judgment of the Reference Court impugned in these First Appeals, the decision of this Court in First Appeal No.2536/2015 and also the decision of the Supreme Court reversing it and remanding it to this court. Suffice to observe that this Court indeed is obliged to decide First Appeals afresh on its own merits by examining the evidence led before the Reference Court.

8. It is also apparent that while deciding the Land Acquisition References, the Reference Court has fixed the amount of compensation for the trees on the basis of the decision in the case of First Appeal No.2536/2015. But in addition, the Reference Court has also considered the evidence of both expert valuers namely Ravindra Ghanshyam Chaudhari and Kamalnayan Uttamchand Sanghavi, albeit in doing so, reliance is placed on the decision of this Court in First Appeal No.2536/2015. It is not apparently

a fact that the Reference Court without indulging into any discussion has accepted the report of these valuers as it is by referring to the decision in the case of First Appeal No.2536/2015.

9. Besides, with respect, the decision of the Supreme Court setting aside the judgment of this Court in the First Appeal No.2536/2015 does not independently touch the aspect of valuation of the trees and the evidence led in that respect in that matter.

10. It is in view of such peculiar state of affairs, when this Court has found some of the claimants entitled to receive the amount of compensation deposited by the Acquiring Body in this Court by the order dated 12.04.2019 and 25% of the amount has already been secured inasmuch as the Acquiring Body has only been directed to deposit 75% of the amount of compensation, there is no sufficient and cogent reason to recall such orders of withdrawal merely on the ground of passing of the decision by the Supreme Court. Consequently, there is no substance in these applications for recalling the orders and the applications are liable to be rejected.

11. As a logical and legal corollary, the claimants, who have still not received any compensation and have not been allowed to withdraw the money up-till now, can now be allowed to withdraw the amount deposited in this Court by the Acquiring Body strictly in accordance with the order dated 12.04.2019 passed by this Court in Civil Application No.4293/2019 and

connected matters.

12. In the result, Civil Applications for recalling of the order dated 12.04.2019 passed in Civil Application No.4293/2019 and connected matters are rejected.

13. Civil Applications for withdrawal of the amount of compensation are allowed. The applicants/claimants in these applications are allowed to withdraw the amount deposited in this Court by the Acquiring Body in accordance with the order dated 12.04.2019 passed by this Court in Civil Application No.4293/2019 and other connected matters.

[MANGESH S. PATIL]
JUDGE

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