

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

913 CIVIL APPLICATION NO.5011 OF 2020 IN FIRST APPEAL NO.221/2020

SHANTABAI TUKARAM SHELKE (DIED) THROUGH
LRS. YASHODABAI AND OTHERS
VERSUS

THE EXECUTIVE ENGINEER MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

WITH

CIVIL APPLICATION NO.5012/2020 IN FIRST APPEAL NO.260/2020
VASANT DHANRAJ PATIL

VERSUS

THE EXECUTIVE ENGINEER MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

WITH

CIVIL APPLICATION NO.5013/2020 IN FIRST APPEAL NO.261/2020
EKNATH DHANRAJ PATIL

VERSUS

THE EXECUTIVE ENGINEER MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

WITH

CIVIL APPLICATION NO.5014/2020 IN FIRST APPEAL NO.258/2020
JAGANNATH DHANRAJ PATIL

VERSUS

THE EXECUTIVE ENGINEER MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

WITH

CIVIL APPLICATION NO.5015/2020 IN FIRST APPEAL NO.259/2020
BHASKAR DHANRAJ PATIL

VERSUS

THE EXECUTIVE ENGINEER MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

WITH

CIVIL APPLICATION NO.5016/2020 IN FIRST APPEAL NO.256/2020
SHIVDAS DHANRAJ PATIL

VERSUS

THE EXECUTIVE ENGINEER MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

WITH
CIVIL APPLICATION NO.5017/2020 IN FIRST APPEAL NO.262/2020
PUSHPABAI SHATRUNGHNA PATIL
VERSUS
THE EXECUTIVE ENGINEER MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

WITH
CIVIL APPLICATION NO.5018/2020 IN FIRST APPEAL NO.257/2020
RAGHNUATH DHANRAJ PATIL
VERSUS
THE EXECUTIVE ENGINEER MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

AND
914 CIVIL APPLICATION NO.5047 OF 2020
IN FIRST APPEAL (ST.) NO.35656/2019
SITARAM NAMDEO TELI DECEASED THROUGH LRS KAMALABAI (DIED)
THR LRS RAMESH CHAUDHARI AND OTHERS
VERSUS
THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION JALGAON
AND OTHERS

AND
915 CIVIL APPLICATION NO.5048 OF 2020
IN FIRST APPEAL (ST.) NO.34939/2019
SHRAVAN RAMDAS TELI AND OTHERS
VERSUS
THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

AND
916 CIVIL APPLICATION NO.5049 OF 2020
IN FIRST APPEAL NO.577/2020
LAXMIBAI BABU BARI AND OTHERS
VERSUS
THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

AND
917 CIVIL APPLICATION NO.5050 OF 2020
IN FIRST APPEAL NO.731/2020
HIMMAT DEVCHAND SHINDE AND OTHERS
VERSUS

THE EX. ENGINEER, MINOR IRRIGATION DIVISION, JALGAON AND
OTHERS

WITH

CIVIL APPLICATION NO.5051/2020 IN FIRST APPEAL NO.732/2020

BHIMRAO NARAYAN DHOB (DIED) THROUGH LRS VATSALABAI
AND OTHERS

VERSUS

THE EX. ENGINEER, MINOR IRRIGATION DIVISION, JALGAON AND
OTHERS

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AND

918 CIVIL APPLICATION NO.5055 OF 2020 IN FA/1310/2020

RAMDAS BHAGWAT SONWANE

VERSUS

THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

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AND

919 CIVIL APPLICATION NO.5062 OF 2020

IN FIRST APPEAL ST. NO.28252/2019

PUNDLIK KALU DUNDE (DIED) THROUGH LRS VATSALABAI (DIED)

THROUGH LRS RAJU DUNDE AND OTHERS

VERSUS

THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION, JALGAON
AND OTHERS

WITH

CIVIL APPLICATION NO.5063/2020 IN FIRST APPEAL ST. NO.28257/2019

RAMDAS TULSHIRAM NHAVERI (DIED) THROUGH LRS JANABAI (DIED)

THROUGH LRS CHANGU NHAVERI AND OTHERS

VERSUS

THE EX. ENGINEER, MINOR IRRIGATION DIVISION, JALGAON AND
OTHERS

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Mr. Vinod P. Patil, Advocate for applicants.

Shri A.D. Pawar, Advocate for respondent nos.1 & 2.

S/Shri S.Y. Mahajan, P.K. Lakhotiya, A.A. Jagatkar & P.N.Kutti, AGPs for respondent
nos.3 & 4.

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CORAM: V.L. ACHLIYA, J.

DATE: 21.08.2020

PER COURT :

1] The applicants – claimants in respective appeals have moved these applications seeking withdrawal of amount deposited by the appellant – acquiring body.

2] Heard learned counsel for the applicants - claimants in respective appeals and the learned counsel representing the appellant – acquiring body.

3] Learned counsel for the applicants – claimants in respective appeals submits that pursuant to conditional order dated 19.11.2019 passed by this Court to stay the execution of award passed by the Reference Court subject to deposit of 80% of the amount in terms of award passed, the appellant – acquiring body has deposited the amount varying from 25% to 70% of the amount awarded by the Reference Court. It is contended that the appellant has no case to succeed in appeals. In a reference arising out of land acquisition for same purpose, the applicants are considering the proposal to settle the claim for 80% of amount awarded by the Reference Court. The case of the applicants is similar to proposal under consideration of the appellant – acquiring body. In that view, the applicants be allowed to withdraw the entire amount deposited by the appellant – acquiring body.

4] On the other hand, learned counsel for the appellant –

acquiring body opposed the applications with contention that the appellant has good case to succeed in appeals. The compensation awarded by the SLAO @ Rs.2,50,000/- per Hectare has been enhanced to Rs.5,40,000/- per Hectare for Jirayat land and Rs.10,80,000/- per Hectare for Bagayat land without any evidence adduced by claimants to support such enhancement. Similarly, the interest has been awarded from the date of taking possession which is contrary to Full Bench decision of this Court. So also the compensation awarded on account of fruit bearing trees is not sustainable in law in view of compensation awarded by considering the same as Bagayat land. If the applicants are permitted to withdraw the entire amount, then it will be difficult to recover the same in the event award passed by the Reference Court is set aside or modified by this Court. It is submitted that time to deposit the balance amount has been extended vide order dated 3.7.2020 passed by this Court. The proposal to release balance amount for deposit has been sent to State Government.

5] Since the applicants have not specified the exact amount deposited and available for withdrawal, vide order dated 14.8.2020, the Nazir of this Court was directed to submit report in respect of amount deposited by the appellant - acquiring body in the respective appeals and available for withdrawal. The Nazir has

submitted the report and reported as under:-

Sr. No.	Matter No.	Amount
1	C.A.No.5011/20 IN F.A.No.221/20	5701700.00
2	C.A.No.5012/20 IN F.A.No.260/20	415100.00
3	C.A.No.5013/20 IN F.A.No.261/20	438400.00
4	C.A.No.5014/20 IN F.A.No.258/20	463200.00
5	C.A.No.5015/20 IN F.A.No.259/20	408000.00
6	C.A.No.5016/20 IN F.A.No.256/20	454900.00
7	C.A.No.5017/20 IN F.A.No.262/20	1808800.00
8	C.A.No.5018/20 IN F.A.No.257/20	325600.00
9	C.A.No.5047/20 IN FAST 35656/19	413655.00
10	C.A.No.5048/20 IN FAST 34939/19	2941830.00
11	C.A.No.5049/20 IN F.A.NO. 577/20	441858.00
12	C.A.No.5050/20 IN F.A. NO.731/120	2049855.00
13	C.A.No.5051/20 IN F.A.NO.732/20	2905936.00
14	C.A.No.5055/20 IN F.A.NO.1310/20	479434.00
15	C.A.No.5062/20 IN FAST 28252/19	1495425.00
16	C.A.No.5063/20 IN FAST 28257/19	1651000.00

6] Learned counsel for the applicants has tendered statement containing amount to be deposited in terms of award in respective appeals and the amount deposited with the percentage of deposit. The details are as under:-

Sr. No.	Matter No.	Total decretal amount	Amount deposited in court.	Amount in % deposited in court by acquiring body
1	CA No.5011/20 in F.A.No.221/20	81,45,335	57,01,700	70%
2	CA No.5012/20 in	8,91,761	4,15,100	46%

	F.A.No.260/20			
3	CA No.5013/20 in F.A.No.261/20	9,41,692	4,38,400	46%
4	CA No.5014/20 in F.A.No.258/20	9,94,638	4,63,200	46%
5	CA No.5015/20 in F.A.No.259/20	8,76,590	4,08,000	46%
6	CA No.5016/20 in F.A.No.256/20	9,76,726	4,54,900	46%
7	CA No.5017/20 in F.A.No.262/20	38,75,805	18,08,800	46%
8	CA No.5018/20 in F.A.No.257/20	6,99,941	3,25,600	46%
9	CA No.5047/20 in F.A.St.No.35656/19	8,27,308	4,13,655	50%
10	CA No.5048/20 in F.A.St.No.34939/19	58,83,659	29,41,830	50%
11	CA No.5049/20 in F.A.No.577/20	8,83,715	4,41,858	50%
12	CA No.5050/20 in F.A.No.731/20	40,99,711	20,49,855	50%
13	CA No.5051/20 in F.A.No.732/20	58,11,873	29,05,936	50%
14	CA No.5055/20 in F.A.No.1310/20	19,17,735	4,79,434	25%
15	CA No.5062/20 in F.A.St.No.28552/19	60,43,490	14,95,425	25%
16	CA No.5063/20 in F.A.St.No.28257/19	56,61,134	16,51,000	29%

7] The particulars of the deposit given by learned counsel for the applicants – claimants reflect that except First Appeal No.221/2020, in other appeals the deposit of amount is in the range of 50% or less than 50%.

8] Since the deposit of amount in appeals other than First Appeal No.221/2020 is 50% or less than 50% of the amount

awarded by the Reference Court, I am of the view that the applicants in respective appeals be permitted to withdraw the amount on furnishing undertaking to the effect that in case the award is set aside or modified, the applicants - claimants in respective appeals shall re-deposit the amount within eight weeks from the date of passing of such order.

9] The applicants in Civil Application No.5011/2020 filed in First Appeal No.221/2020 be permitted to withdraw the amount of Rs.40,00,000/- (rupees forth lakhs only) i.e. 50% of the amount awarded by the Reference Court to maintain parity and to safeguard the interest of appellant - acquiring body. Hence, the following order.

ORDER

A] The applicants - claimants in respective appeals, except the applicants - claimants in Civil Application No.5011/2020 filed in First Appeal No.221/2020, are permitted to withdraw the amount as deposited in the respective appeals to the extent mentioned in the report of Nazir (i.e. paragraph no.5) on furnishing written undertaking to the satisfaction of Registrar (Judicial) that in the event the award passed by the Reference Court is set aside or modified, the applicants - claimants shall re-

deposit the amount withdrawn within eight weeks from the date of passing of such order.

B] The applicants - claimants in Civil Application No.5011/2020 filed in First Appeal No.221/2020 are permitted to withdraw the amount to the extent of Rs.40,00,000/- (rupees forth lakhs only) out of amount of Rs.57,01,700/- deposited by the appellant - acquiring body on furnishing written undertaking to the satisfaction of Registrar (Judicial) that in the event the award passed by the Reference Court is set aside or modified, the applicants - claimants shall re-deposit the amount within eight weeks from the date of passing of such order.

C] Withdrawal of amount by the applicants - claimants in respective appeals shall be subject to final decision in respective appeals.

D] The amount allowed to be withdrawn be paid by transferring the amount to savings bank accounts of respective applicants - claimants on each of them furnishing particulars of their respective savings bank accounts.

E] The oral request made by learned counsel for the applicants to make payment of amount to General /

Special Power of Attorney holder of applicants – claimants
is rejected.

F] The applications are disposed of in above terms.

(V.L. ACHLIYA, J.)