

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

922 CIVIL APPLICATION NO.5070/2020 IN FIRST APPEAL (ST.) NO.35599/2019  
DAGADU NARAYAN KHODKE (DIED) THROUGH LRS KAUSHALYABAI  
AND OTHERS  
VERSUS  
THE EX. ENGINEER, MINOR IRRIGATION DIVISION, JALGAON AND  
OTHERS

WITH  
CIVIL APPLICATION NO.5069/2020 IN FIRST APPEAL (ST.) NO.35581/2019  
PANDURANG FAKIRA TELI AND OTHERS  
VERSUS  
THE EX. ENGINEER, MINOR IRRIGATION DIVISION, JALGAON AND  
OTHERS

WITH  
CIVIL APPLICATION NO.5071/2020 IN FIRST APPEAL (ST.) NO.35590/2019  
DAGADU BHAVDU BARI (DIED) THROUGH LRS DHRUPADABAI BARI  
VERSUS  
THE EX. ENGINEER, MINOR IRRIGATION DIVISION, JALGAON AND  
OTHERS

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Shri Vinod Prakash Patil, Advocate for applicants.

Smt.Vaishali D. Jadhav, Advocate for respondent nos.1 & 2.

Shri P.K. Lakhotiya, AGP for respondent nos.3 & 4.

**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 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 less than 25% of the amount awarded by the Reference Court.

4] It is submitted that 80% of the amount awarded by the Reference Court is yet to be deposited. It is submitted that the appellant has no case to succeed in appeals. In reference arising out of same acquisition, the applicants are in process to settle the claim to the extent of 80% of amount awarded by the Reference Court. The case of the applicants stands at par with the proposal under consideration of the appellant - acquiring body. In that view, the applicants be allowed to withdraw the amount deposited by the appellant - acquiring body.

5] 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 in the range of Rs.80,000/- to Rs.1,40,000/- per Hectare has been enhanced to Rs.4,50,000/- per Hectare for Jirayat land and Rs.9,00,000/- per Hectare for Bagayat land without

any evidence adduced on the part of 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. If the applicants are permitted to withdraw the amount, then it will be difficult for appellant to recover the same if award is set aside or modified. It is submitted that vide order dated 30.6.2020 passed by this Court, time to deposit the remaining amount has been extended by six months and the proposal to release further amount has been forwarded to the State Government.

6] Since the applicants have not specified in their respective applications as to the amount deposited and available for withdrawal, the Nazir of this Court was directed to submit report vide order dated 14.8.2020 in respect of amount deposited by the appellant – acquiring body in the respective appeals. The Nazir has submitted the report and reported deposit of amount as under:-

| Sr. No. | Matter No.                      | Amount     |
|---------|---------------------------------|------------|
| 1       | C.A.No.5070/20 IN FAST 35599/19 | 1538400.00 |
| 2       | C.A.No.5069/20 IN FAST 35581/19 | 1179700.00 |
| 3       | C.A.No.5071/20 IN FAST 35590/19 | 297600.00  |

7] Today learned counsel for the applicants has tendered on record the statement in respect of total decretal amount, amount

deposited by appellant and the percentage of deposit in these matters as under:-

| Sr. No. | Matter No.                          | Total decretal amount | Amount deposited in court. | Amount in % deposited in court by acquiring body |
|---------|-------------------------------------|-----------------------|----------------------------|--------------------------------------------------|
| 1       | CA No.5070/20 in F.A.St.No.35599/19 | 7192987               | 1538400                    | 21%                                              |
| 2       | CA No.5069/20 in F.A.St.No.35581/19 | 5515559               | 1179700                    | 21%                                              |
| 3       | CA No.5071/20 in F.A.St.No.35590/19 | 1391380               | 297600                     | 21%                                              |

8] On due consideration of the submissions advanced in the light of challenge raised, I am of the view that as the deposit of amount is only to the extent of 25% of award passed by the Reference Court, the applicants - claimants be permitted to withdraw the amount deposited by the appellant - acquiring body on furnishing undertaking by the applicants 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. On deposit of further amount, the orders as to investment of such amount as well as further withdrawal of amount can be considered in the light of challenge raised in respective appeals. Hence, the following order.

### **ORDER**

A] The applicants - claimants in respective appeals are

permitted to withdraw the amount deposited by the appellant – acquiring body in respective appeals as per report of Nazir on condition to file undertaking to the satisfaction of Registrar (Judicial) that in the event the award passed by the Tribunal 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] Withdrawal of amount by the applicants – claimants shall be subject to outcome of final decision in respective appeals.

C] The amount permitted to be withdrawn be transferred to the savings bank accounts of respective applicants - claimants on furnishing particulars of their respective savings bank accounts.

D] On deposit of further amount by the appellant – acquiring body, further orders as to investment as well as further withdrawal of amount shall be passed after considering the contentions raised by the appellant – acquiring body.

E] Oral request made by learned counsel for the applicants to make payments to the applicants –

claimants through General Power of Attorney holder is rejected. The amount be paid to the applicants - claimants in the name of individual claimants by transferring the same in their respective savings bank accounts.

F] The applications are disposed of in above terms.

**(V.L. ACHLIYA, J.)**