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CA 6439/20

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

**22 CIVIL APPLICATION NO. 6439 OF 2020
IN FA/123/20**

WITH

**CIVIL APPLICATION NO. 6442 OF 2020
IN FA/132/20**

WITH

**CIVIL APPLICATION NO. 6437 OF 2020
IN FA/124/20**

WITH

**CIVIL APPLICATION NO. 6441 OF 2020
IN FA/135/20**

WITH

**CIVIL APPLICATION NO. 6440 OF 2020
IN FA/133/20**

WITH

**CIVIL APPLICATION NO. 6435 OF 2020
IN FA/127/20**

WITH

**CIVIL APPLICATION NO. 3436 OF 2020
IN FA/126/20**

WITH

**CIVIL APPLICATION NO. 6443 OF 2020
IN FA/128/20**

WITH

**CIVIL APPLICATION NO. 6060 OF 2020
IN FA/136/20**

WITH

**CIVIL APPLICATION NO. 6061 OF 2020
IN FA/140/20**

WITH

**CIVIL APPLICATION NO. 6062 OF 2020
IN FA/139/20**

WITH

**CIVIL APPLICATION NO. 6063 OF 2020
IN FA/141/20**

WITH

**CIVIL APPLICATION NO. 6064 OF 2020
IN FA/142/20
WITH
CIVIL APPLICATION NO. 6065 OF 2020
IN FA/146/20
WITH
CIVIL APPLICATION NO. 6067 OF 2020
IN FA/147/20
WITH
CIVIL APPLICATION NO. 6072 OF 2020
IN FA/143/20
WITH
CIVIL APPLICATION NO. 6073 OF 2020
IN FA/144/20
WITH
CIVIL APPLICATION NO. 6074 OF 2020
IN FA/138/20
WITH**

**SHANKAR NAGNATH YECHALE
VS
THE STATE OF MAHARASHTRA AND ORS**

Mr. G. K. Sontakke, Advocate, Mr. Sham B. Patil, Advocate and Mr. Sudhir G. Bhalerao, Advocate are present in respective applications
Mr. P. M. Kulkarni, AGP for the respondent/State

CORAM : V. L. ACHLIYA, J.

DATE : 14-12-2020

P. C.

. The applicant has moved this application seeking permission to withdraw the amount deposited by the acquiring body.

2. Heard learned counsel for the applicants and counsel representing for the acquiring body in respective appeals.

3. In brief, it is the contention of the learned counsel for the appellants that the appellants have good case to succeed in appeal. It is submitted that this is second round of litigation. In the earlier round of litigation the appeal preferred allowed and cases were remanded for fresh decision. The amount in terms of earlier award has been paid and withdrawn by the applicants/claimants. By referring overall facts of the case and award passed in the matter, the learned counsel submits that award passed by the reference court in respective appeals are not sustainable in law.

4. It is pointed out that for the purpose of determining the compensation the reference court has placed reliance upon sale instance in respect of 22-R of land. It is submitted that it is quite settled position in law while determining the compensation the court has to consider the comparable sale instance of land of same nature and potential. It is submitted that huge land has been acquired for irrigation project. i.e. storage tank. The land is dry crop land. It is located far away from the land in respect of which sale instance has been referred and relied. It is further submitted that as per the provision of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act there is prohibition to sale the land below the area prescribed under the Act. It is further submitted that as per law prevailing the sale deed of land

below 2-Acres of land is not permissible. In that view the sale deed as referred relied itself contrary to the provision of law. Moreover, land being 22-R of land having no similarity with the lands acquired. The tribunal has erred in enhancing the compensation from Rs. 21,000/- to 23,000/- awarded by the Special Land Acquisition Officer to Rs. 2,50,000/- per Acre for Jirayat land and Rs. 5,00,000/- for irrigated land.

5. Learned counsel further submits that the interest awarded from the date of possession by reference court is not also sustainable in law. In the law laid down by this court in the case of *State of Maharashtra Vs Kailash Shiva Rangari reported in 2016(3)Mh.LJ 457*. In the background overall facts of the case and challenge raised in the appeal the applicants are permitted to withdraw the amount, it will be difficult to recover the same in the event the the appeals are allowed and award passed by the reference court is modified.

6. On the other hand learned counsel for the applicants-claimants support the judgment and order passed by the reference court.

7. It is submitted that assessment of compensation is based upon the evidence adduced in the case. The appeals preferred by the appellants are devoid of merits.

8. On due consideration of the submissions advanced, I am of the view that there is arguable case to be considered in appeals. Prima-facie interest awarded u/s 34 of the Land Act is contrary to full bench decision of this court in the case of *State of Maharashtra Vs Kailash Shiva Rangari reported in 2016(3) MhLJ 457*. Moreover, enhancement of compensation is about 9 to 10 times the compensation awarded by the Special Land Acquisition Officer. Assessment of compensation appears to be made on the basis of sale instance in respect of small piece of land i.e. 22-R of land. It is pertinent note that in terms of provision of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 there is a prohibition under law to transfer or partition any land so as to create a fragment.

9. In the instant case the reference court has enhanced the compensation by relying upon the sale instance in respect of small piece of land admeasuring 22-R. It is observed that the reference courts are invariably relying upon the sale instance of small piece of land in determination of compensation though such transactions are prohibited and hit by the provisions of the Maharashtra Prevention of Fragmentation and Consolidation and Holdings Act, 1947 (hereinafter referred to as the 'said Act'). In terms of section 7 there is absolute prohibition for transfer of fragment of land except to the owner of contiguous survey number. Section 8 of the said Act further provide that no land in any local area shall be transferred or partitioned so as to create a fragment.

Section 8 AA places restrictions on partition of land even in execution of decree so as to create fragment. Sub-section 2 of Section 8 AA provides for procedure to be followed where the land cannot be partitioned without creating fragment. Section 9 of the said Act provides that any transfer or partition of any land contrary to the provision of said Act shall be void and provides power of imposition of penalty as well as empower the Collector to summarily evict such person who has unauthorizedly or wrongly put in possession of such land by way of transfer or partition. In spite of such provisions the reference courts are invariably relying upon sale instances of fragment of land made in contravention of provisions of said Act. The case in hand is a classic case, wherein the court has acted upon the sale instance of land admeasuring 22-R Jirayat land for purpose of assessment of compensation by treating the same as comparable sale instance to determine the compensation. By relying upon such sale instance of fragment of land the compensation has been enhanced 8 to 9 times the compensation assessed by the Special Land Acquisition Officer.

10. Reference court have overlooked the settled principles of law in determination of compensation while assessing the compensation. The courts are expected to follow the comparable sale instance of similarly situated land. When there is bulk acquisition of land the assessment of compensation by relying upon the small piece of land not desirable on the part of reference court. The sale instance to be relied must be of similarly situated land and

comparable sale instance. So also, the reference court should not act upon sale deeds which are executed in breach of provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act and void in law.

11. In that view, I am inclined to pass following order:-

ORDER

- i. The applicants are permitted to withdraw the amount to the extent of 40% of amount deposited in respective appeals by the acquiring body on furnishing undertaking to the satisfaction of the Registrar (Judicial) that in the event the award is set aside or modified, the applicants shall re-deposit the amount within eight weeks from the date of passing of such order by this court.
- ii. After paying the amount to the extent of 40% amount deposited, the balance amount be invested in fixed deposit with any nationalized bank, till disposal of appeal.
- iii. The payment of amount to applicants shall be subject to final outcome of the appeal.

[V. L. ACHLIYA, J.]