

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 466 OF 2021
IN FIRST APPEAL (STAMP) NO.26257 OF 2019

BABRUWAN YEDBA MALI
VERSUS
THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

WITH
CIVIL APPLICATION NO. 1 OF 2021
IN FIRST APPEAL (STAMP) NO.26238 OF 2019

GAJARABI MARUTI KSHIRSAGAR (DIED) THROUGH
LRS. PANDURANG MARUTI KSHIRSAGAR AND OTHERS
VERSUS

THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

WITH
CIVIL APPLICATION NO. 3 OF 2021
IN FIRST APPEAL (STAMP) NO.26252 OF 2019

RAOSAHEB SAMBHAJI KEDAR
VERSUS
THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

WITH
CIVIL APPLICATION NO. 464 OF 2021
IN FIRST APPEAL (STAMP) NO.26241 OF 2019

PADMAKAR AMBRUSHI SATHE AND ANR.
VERSUS
THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

WITH
CIVIL APPLICATION NO. 02 OF 2021
IN FIRST APPEAL (STAMP) NO.26261 OF 2019

GENA DAJI GAIKWAD (DIED) THROUGH L.RS.
LAXMIBAI GENA GAIKWAD AND ORS.
VERSUS

THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

WITH
CIVIL APPLICATION NO. 04 OF 2021
IN FIRST APPEAL (STAMP) NO.26247 OF 2019

DINKAR SADASHIV BHADRE
VERSUS
THE EXECUTIVE ENGINEER, LIFT IRRIGATION
DIVISION, OSMANABAD AND ORS.

Mr.V.V. Ingale, Advocate for the
applicant/applicants
Mr.S.C. Arora, Advocate for the respondent
no.1.
Mr.A.A. Jagatkar, AGP for the
respondent/State

...
CORAM : V.L.ACHLIYA,J.
DATE : 18.01.2021

ORAL ORDER :

The applicants – claimants preferred these applications seeking withdrawal of amount deposited by the appellant-acquiring body in the respective appeals.

2. Heard learned counsel for the applicants-claimants and respondent-acquiring body.

3. In brief, it is the contention of learned counsel for the appellant that the award passed by the Reference Court is not

legally sustainable in law. The enhancement has been made without any evidence adduced in the case. The reference has been decided on the basis of decision in L.A.R. No.757/2011, which is under challenge before this Court. No independent evidence adduced to justify enhancement on the part of claimants. The compensation assessed by the S.L.A.O. @ Rs.210/- per R has been enhanced to Rs.688/- per R without any legally sustainable evidence adduced on the part of claimants. It is submitted that it is settled position in law that to seek enhancement, it is incumbent upon the claimants to lead evidence and prove that compensation assessed requires re-determination based upon evidence to support enhancement. Without such exercise being made, the Reference Court enhanced compensation by solely relying upon the award passed in another proceedings that too without any evidence adduced to show that similarity in between the land subject matter of the Reference proceeding and the award passed by reference Court in another proceedings arising out of acquisition of land for same purposes and same village. So also the interest has been awarded from the date of notification, which is contrary to

the Full Bench decision of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** reported in ***2016(3) Mh.L.J. 457***. In this background, learned counsel submits that the applicants have good case to succeed in appeals and urged to reject the applications seeking withdrawal of amount.

4. On the other hand, learned counsel for the applicants-claimants support the judgment and award passed by the Reference Court. It is submitted that the applicants have good case to succeed in appeals. The lands are acquired in the year 1995. The Special Land Acquisition Officer has awarded meager amount of compensation. There is perversity in the judgment and order passed by the Tribunal. The appeals preferred are devoid of merit.

5. On due consideration of submissions advanced in the light of overall facts of the case, I am of view, there is arguable case in appeals. The enhancement is based upon the award passed in L.A.R. No.757/2011, which is under challenge in First Appeal (Stamp) No.26241/2019 before this Court. The enhancement is about 5 to 6 times of

compensation assessed and awarded by the Special Land Acquisition Officer. So also the issue of award of interest U/Sec. 34 is also involved in the case. Considering the challenges raised in appeals, I am of the view, the applicants are allowed to withdraw the amount to the extent of 50% deposited by the appellant-acquiring body on furnishing the undertaking. Hence the following order :-

ORDER

(i) The applications are partly allowed.

(ii) The applicants-claimants in respective applications are permitted to withdraw the amount to the extent of 50% of the amount deposited by the appellant – acquiring body in their respective appeals on furnishing written undertaking to the effect that in the event the award is set aside or modified, the they shall re-deposit the amount with this Court within eight weeks from the date of passing of such orders.

(iii) After making payment to the extent of 50% of amount deposited to applicants in respective appeals, the balance amount be invested in fixed deposit with any Nationalized Bank initially for a period of

two years with standing instructions to renew the same till further orders from this Court or disposal of appeals, whichever earlier.

(iv) The payment be made to the respective applicants by transferring the amount in their respective Savings Bank Account. No amount to be payable to the persons other than claimants.

(v) The payment of amount shall be subject to outcome of appeals.

vi) Civil Applications are disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

SGA