

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

**5 CIVIL APPLICATION NO.1168 OF 2021
IN FIRST APPEAL (STAMP) NO.1925 OF 2021**

**THE EXECUTIVE ENGINEER, IRRIGATION DEPARTMENT
STRENGTHENING DIVISION OMERGA AND ORS
VERSUS**

**MAHAMUDA BEGAM J. MURTUJKHA PATHAN
WITH**

**CIVIL APPLICATION NO.1170 OF 2021
IN FIRST APPEAL (STAMP) NO.1930 OF 2021**

**THE EXECUTIVE ENGINEER, IRRIGATION DEPARTMENT
STRENGTHENING DIVISION OMERGA AND ORS
VERSUS**

**KISHOR VISHWANATH DUKARE
WITH**

**CIVIL APPLICATION NO.1172 OF 2021
IN FIRST APPEAL (STAMP) NO.1810 OF 2021**

**THE EXECUTIVE ENGINEER, IRRIGATION
DEPARTMENT STRENGTHENING DIVISION OMERGA AND
ORS**

VERSUS

RUKMUDDIN CHANDPASHA MUSALDAR

...

**Mr.Rahul A. Tambe, Advocate for the
applicants.**

...

**CORAM : V.L.ACHLIYA,J.
DATE : 25.01.2021**

ORAL ORDER :

Heard.

**2. In brief, it is the contention of
learned counsel for the appellants-applicants
that the award passed by the Reference Court**

is not sustainable in law. It is submitted that the compensation assessed @ Rs.750/- per R by the SLAO has been enhanced to Rs.8500/- per R without any evidence to support such enhancement. It is submitted that for the purposes of enhancement, the Reference Court has placed reliance upon the sale instance of 7 R of land, which cannot be treated as comparable sale instance. So also the transaction of land admeasuring 7 R is hit by provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The sale deed executed in respect of 7 R land being prohibited under law, the same cannot be treated as sale instance to assess the compensation. It is further submitted that the interest to be awarded U/Sec. 28 of the Land Acquisition Act has been awarded from the date of taking possession, 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 appellants-applicants have good case to succeed in appeals. If the award passed by the Reference Court is not stayed, the purpose of filing appeals would be

frustrated.

3. On due consideration of submissions advanced and challenges raised in the appeals, the following order is passed :-

ORDER

(i) The applications are allowed in terms of prayer clause "B" in respective applications subject to deposit of amount to the extent of 70% of the award passed by the Reference Court within 12 weeks from the date of passing of order.

(ii) Failure to deposit the amount within 12 weeks, the stay granted stands vacated without further reference to the Court, unless the time is extended to deposit the amount before due date.

(iii) The applications are disposed of in above terms.

[V.L.ACHLIYA]
JUDGE