

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

**CIVIL APPLICATION NO.1311 OF 2020 IN
FIRST APPEAL NO.1447 OF 2019**

Omprakash shivlal Agrawal ... **APPLICANT**

VERSUS

The Special Land Acquisition Officer,
M.I.W. Jalgaon & ors. ... **RESPONDENTS**

.....

Mr. A.B. Kale, Advocate for applicant
Mr. S.N. Kendre, A.G.P. for respondent No.1.
Mr. C.T. Jadhav, Advocate for respondent No.2.

.....

AND

**CIVIL APPLICATION NO.1312 OF 2020 IN
FIRST APPEAL NO.1448 OF 2019**

Omprakash shivlal Agrawal ... **APPLICANT**

VERSUS

The Special Land Acquisition Officer,
M.I.W. Jalgaon & ors. ... **RESPONDENTS**

.....

Mr. A.B. Kale, Advocate for applicant
Mr. S.N. Kendre, A.G.P. for respondent No.1.
Mr. C.T. Jadhav, Advocate for respondent No.2.

.....

AND

**CIVIL APPLICATION NO.1313 OF 2020 IN
FIRST APPEAL NO.1440 OF 2019**

Omprakash shivlal Agrawal

... APPLICANT

VERSUS

The Special Land Acquisition Officer,
M.I.W. Jalgaon & ors.

... RESPONDENTS

.....

Mr. A.B. Kale, Advocate for applicant

Mr. S.N. Kendre, A.G.P. for respondent No.1.

Mr. C.T. Jadhav, Advocate for respondent No.2.

.....

AND

**CIVIL APPLICATION NO.5316 OF 2020 IN
FIRST APPEAL NO.1440 OF 2019**

Ravindra Shivlal Agrawal

... APPLICANT

VERSUS

The Executive Engineer,
M.I.W. Jalgaon & anr.

... RESPONDENTS

.....

Mr. U.B. Gite, Advocate for applicant

Mr. S.N. Kendre, A.G.P. for respondent No.1.

Mr. C.T. Jadhav, Advocate for respondent No.2.

.....

CORAM : R. G. AVACHAT, J.

DATE : 13th OCTOBER, 2021

ORDER :

These are the applications for withdrawal of the amount of compensation deposited by the respondent – acquiring body with this Court. The lands of the applicant

have been compulsorily acquired for minor irrigation tank way back in 1998. Having not been satisfied with the amount of compensation offered by Land Acquisition Officer, the applicant preferred Land Acquisition References for enhancement of compensation. The Reference Court enhanced the same. The said order of enhancement of compensation has been challenged by the respondent – acquiring body in First appeals.

2. Heard. Learned counsel for the acquiring body would submit that, the Reference Court has enhanced the compensation many a times. According to him, the applicant deserves to receive only 25% of the amount in deposit with this Court. According to him, the Reference Court enhanced the compensation on the ground of parity i.e. on considering the quantum of compensation awarded in connected/ similarly placed matters. It also relied on the judgment of this Court in first Appeal No.2536/2015. According to learned counsel, the Hon'ble Apex Court has set aside the judgment and order of this Court passed in the said appeal and remanded the matter back to this Court for deciding it afresh. He would further submit, the expert Valuer had paid visit to the land way back in 1994. The expert's evidence is unreliable. Most of the

orange trees found on the land acquired were in unripe stage. They were in fact grafts. Moreover, a huge number of trees have been shown in a small piece of land. That really affects the yield therefrom. The Reference Court considered the rates of fruits in the District A.P.M.C. Market. It should have in fact relied on the rate of fruits in local/ Taluka market. According to learned counsel, the appellant acquiring body has a very good case in appeal. The amount if paid to the applicants would be unrecoverable, in case the appeals are allowed. He, therefore, urged for rejection of the applications.

3. Learned counsel for the applicants would, on the other hand, submit that, the lands of the applicant have been acquired compulsorily way back in 1998. He has not yet received amount of compensation. In similarly placed matters, the applicants were permitted to withdraw 75% of the amount in deposit. He, therefore, urged for grant of applications.

4. This Court, vide its order dated 12/4/2019 in Civil Application No.4291/2019, permitted to withdraw 75% of the amount in deposit. The said order was mainly based on the judgment passed by this Court in First Appeal No.2536/2015. True, the judgment and order passed by this Court in the said

appeal has been set aside by the Apex Court. The matter has been remitted back to this Court for deciding afresh. The acquiring body had moved an application for recall of the order dated 12/4/2019 mainly on the ground of the Apex Court order remanding the matter back to this Court. This Court, by its order dated 13/12/2019, rejected the application moved for recall of the order dated 12/4/2019. This Court simultaneously allowed other applications permitting withdrawal of 75% of the amount of compensation in deposit with this Court. As such, the applicants/ claimants in similarly placed matters have been permitted to withdraw 75% of the amount of compensation in deposit with this Court. Admittedly the appellant – acquiring body has not taken exception to the order dated 13/12/2019. On the ground of parity, these applicants are very much entitled to have somewhat similar treatment.

5. I have also perused the impugned judgment passed by the Reference court, wherein it has been observed that, nothing material could be elicited from the cross-examination of the expert valuer (Horticulturist). 25% of the amount kept behind would take care of the claim in appeal. Moreover, the applicant would be directed to furnish a Bank

guarantee so far as regards 25% of the amount which is to be paid to them. As such, 50% of the amount under the impugned award would stand secured. In the fitness of things, the applicant and his brother are permitted to withdraw 75% of the amount in deposit as under :

6. 50% of the amount in deposit be paid as against an undertaking to the satisfaction to the Registrar (Judicial) of this Court. 25% be paid as against continuing bank guarantee. The undertaking and Bank guarantee shall be for refund of the amount with interest @ 5% p.a. from the date of receipt of the amount to the date of payment/ refund, if so directed by the Court in case the appeal succeeds and direction for refund of amount is passed.

7. Civil Applications are disposed of. The amount to be paid to the applicant and his brother shall be as has been suggested under Annexure 'A'.

**(R. G. AVACHAT)
JUDGE**

fmp/-