

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

CIVIL APPLICATION NO. 6287 OF 2020
IN F.A. NO. 3293 OF 2018
ASHOK GAHININATH KOLHE VS. THE STATE OF MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6272 OF 2020
IN F.A. NO. 3307 OF 2018
VITTAL SHIVAJI CHIWDE VS. THE STATE OF MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6273 OF 2020
IN F.A. NO. 3306 OF 2018
RAVAN BHAURAO CHIWDE VS. THE STATE OF MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6274 OF 2020
IN F.A. NO. 3303 OF 2018
BABRUVAN SHESHARAO SALUNKE (DIED) THR. LRS. VS. THE STATE OF
MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6276 OF 2020
IN F.A. NO. 3298 OF 2018
NARAYAN RAMCHANDRA LOKARE VS. THE STATE OF MAHARASHTRA AND ORS

CIVIL APPLICATION NO. 6277 OF 2020
IN F.A. NO. 3299 OF 2018
GUNABAI BHAURAO CHIWDE VS. THE STATE OF MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6278 OF 2020
IN F.A. NO. 3300 OF 2018
DNYANOBA MANOHAR EKAMBE VS. THE STATE OF MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6279 OF 2020
IN F.A. NO. 3301 OF 2018
ABBAS TURAB SAYYAD VS. THE STATE OF MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6280 OF 2020
IN F.A. NO. 3302 OF 2018
KHATUNBE TURAAB SAYYAD VS. THE STATE OF MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6281 OF 2020
IN F.A. NO. 3304 OF 2018

GOVIND NILAPPA SONTAKKE VS. THE STATE OF MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6282 OF 2020

IN F.A. NO. 3305 OF 2018

SOPAN VITTAL EKAMBE VS. THE STATE OF MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6283 OF 2020

IN F.A. NO. 3294 OF 2018

VIJAYKUMAR GAHININATH KOLHE VS. THE STATE OF MAHARASHTRA & ORS

CIVIL APPLICATION NO. 6284 OF 2020

IN F.A. NO. 3295 OF 2018

SANJAY VITTAL EKAMBE VS. THE STATE OF MAHARASHTRA AND ORS.

CIVIL APPLICATION NO. 6285 OF 2020

IN F.A. NO. 3296 OF 2018

LAXMAN VASANT SURYAWANSHI VS. THE STATE OF MAHARASHTRA AND ORS

CIVIL APPLICATION NO. 6286 OF 2020

IN F.A. NO. 3297 OF 2018

GOVIND AMBAJI GHAR VS. THE STATE OF MAHARASHTRA AND ORS.

Mr.G.K. Sontakke, Advocate for the applicants.

Mr.C.T. Jadhav h/f. Mr. M.C. Swami, Advocate for respondent-acquiring body.

Mr.A.A. Jagatkar, AGP for respondent/State.

CORAM : V.L. ACHLIYA, J.

DATE : 05.02.2021

PC :-

01. The applicants have filed these applications seeking withdrawal of amount deposited in their respective appeals by the acquiring body.

02. Heard learned counsel for the applicants-claimants and the learned counsel representing the appellant-acquiring body. Perused the judgment and award

passed by the Reference Court.

03. In brief, it is contention of learned counsel for the appellants that the appellants have good case to succeed in appeal. The compensation assessed is on higher side. The Special Land Acquisition Officer has assessed the compensation in the range of Rs.599/- per R to Rs.615/- per R, which has been enhanced to Rs.4483/- per R to Rs.6724/- per R. In that view, there is enhancement to the extent of 8-9 times the compensation assessed by the Special Land Acquisition Officer. It is submitted that the Reference Court has considered the sale instance of adjoining village, though sale instance of same village was available. It is further submitted that the Reference Court has erred in considering price hike @ 10% per year without any evidence adduced in that behalf. So also interest has been awarded from the date of possession, which is contrary to the Full Bench decision of this Court in the case of State of Maharashtra Vs. Kailash Shiva Rangari, 2016 (3) Mh.L.J.457. Learned Counsel submits that if the applicants are allowed to withdraw the amount deposited, then it will be difficult to recover the amount, if the appeals are allowed and award passed by the Reference Court is set aside.

04. On the other hand, learned Counsel for the

claimants submitted that the appeals filed are devoid of merit. The judgment and award passed by the Reference Court are reasoned and there is no perversity in findings recorded. It is submitted that the Reference Court has considered the comparable sale instance of transaction of the similarly situated land from the vicinity while assessing the compensation. The learned Counsel further submits that in connected appeals, this Court has permitted the claimants to withdraw the amount to the extent of 50% on filing undertaking and balance 50% by furnishing solvent security or bank guarantee.

05. On due consideration of submissions advanced in the light of challenge raised in the appeal, I am of the view that though there is enhancement to the extent of 8-9 times, the compensation awarded by the Reference Court based upon due assessment of evidence adduced in the case. The Reference Court has considered the legal and factual position while enhancing the compensation. The Reference Court has classified the land into two groups for the purpose of determination of market value of the land. For the Jirayat land the compensation payable has been assessed @ Rs.4483/- per R and for seasonally irrigated land, the compensation has been assessed @ Rs.6724/- per R. The classification has been on the basis of evidence adduced in the case. It appears

from the judgment passed by the Reference Court that the sale instance of 1997 from the adjoining village has been taken into consideration while assessing the compensation. The Notification under section 4 of the Land Acquisition Act was issued in 2001. The award was passed in 2003. The Reference Court has considered the hike in price @ 10% per year from 1997 onwards. In that view it is necessary to examine whether there any evidence available on record to support the hike in price @ 10% per year. In my view, there cannot be straight jacket formula to consider the hike @ 10% per year. There may be reverse trend as to decrease in prices of land in corresponding years. In that view, there is arguable case to be considered in appeal.

06. I am of the view that passing of conditional order of withdrawal of amount by furnishing bank guarantee or solvent security act as onerous condition to be fulfilled by the agriculturists. It is not easy to secure bank guarantee or to convince the third person to stood as surety. Instead of passing the order of withdrawal on furnishing bank guarantee or solvent security, endeavour be made to examine over all scope of appeal and pass appropriate order of withdrawal to the extent liability cannot be disputed. In the instant case, the challenge raised in appeal primarily confines

to the quantum of compensation awarded. As per sale instance, the value of land of comparable sale instance relied by the Reference Court was Rs.3595/- per R. In that view, the withdrawal of amount to the extent of 70% on furnishing undertaking and investing the balance amount in the fixed deposit would meet ends of justice. Hence, following order is passed :-

O R D E R

- i) The applications are allowed.
- ii) The applicants in the respective appeals are permitted to withdraw amount to the extent of 70% of amount deposited in the respective appeals, on furnishing undertaking to the effect 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.
- iii) The amounts be paid to the applicants by transferring the amount in their respect accounts on furnishing particulars of their respective saving bank accounts. No amount to be paid to any third person including power of attorney holder.
- iv) The withdrawal of amount shall be subject to final outcome of the appeals.
- v) After making payment to the extent of 70% of the amount deposited, the balance amount be invested in the fixed deposit in any nationalized bank initially for a period of two

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years with standing instructions to renew the fixed deposits till further orders from this Court.

07. The applications are disposed of in above terms.

[V.L. ACHLIYA,J.]