IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

5 CIVIL APPLICATION NO.8729 OF 2020
IN FIRST APPEAL [STAMP] NO.21391 OF 2020
…
MAHARASHTRA KRISHNA VALLY DEVELOPMENT
CORPORATION LIMITED
VERSUS
BALIRAM SHANKAR NAIKODE & OTHERS
…
WITH
CIVIL APPLICATION NO.8731 OF 2020
IN FIRST APPEAL [STAMP] NO.21637 OF 2020

WITH
CIVIL APPLICATION NO.8734 OF 2020
IN FIRST APPEAL [STAMP] NO.21631 OF 2020

…
Mr.A.S.Shelke, Advocate for the applicant – appellant in three Civil Applications.
Mr.A.A.Jagatkar, AGP for the respondent – State.
Mr.L.C.Patil, Advocate for the respondents – claimants.
…

WITH
6 CIVIL APPLICATION NO.8761 OF 2020
IN FIRST APPEAL [STAMP] NO.21385 OF 2020
…
MAHARASHTRA KRISHNA VALLY DEVELOPMENT
CORPORATION LIMITED
VERSUS
SAU.KAMALBAI DATTUGIR BUWA & OTHERS
…
WITH
CIVIL APPLICATION NO.8765 OF 2020
IN FIRST APPEAL [STAMP] NO.21621 OF 2020

…

Mr.A.S.Shelke, Advocate for the applicant – appellant in two Civil Applications.
Mr.P.M.Kulkarni, AGP for the respondent-State.
Mr.L.C.Patil, Advocate for the respondents – claimants.

…

WITH
7 CIVIL APPLICATION NO.8767 OF 2020
IN FIRST APPEAL [STAMP] NO.21464 OF 2020

…
MAHARASHTRA KRISHNA VALLY DEVELOPMENT CORPORATION LIMITED.
VERSUS
INDRAJEET KASHINATH MANALE & OTHERS
…

WITH
CIVIL APPLICATION NO.8770 OF 2020
IN FIRST APPEAL [STAMP] NO.21618 OF 2020

WITH
CIVIL APPLICATION NO.8777 OF 2020
IN FIRST APPEAL [STAMP] NO.21614 OF 2020

WITH
CIVIL APPLICATION NO.8779 OF 2020
IN FIRST APPEAL [STAMP] NO.21599 OF 2020

…
Mr.A.S.Shelke, Advocate for the applicant – appellant in four Civil Applications.
Mr.A.A.Jagatkar, AGP for the respondent – State.
Mr.L.C.Patil, Advocate for the respondents – claimants.

…

CORAM : V.L.ACHLIYA,J.
DATE : 08.02.2021

P.C.

1] The applicants – appellants have moved these applications seeking stay to the execution of the awards passed by the Reference Court which are under challenge in respective appeals on the grounds raised in the memo of appeals.

2] In brief, it is the contention of the learned counsel for the applicants – appellants that enhancement of compensation by the Reference Court is about 10 times for the *jirayat* land and 20 times for *bagayat* land than the compensation assessed by the Land Acquisition Officer. It is pointed out that while enhancing the compensation the Reference Court has referred and relied upon the award passed in LAR No. 399 of 2013. It is submitted that the said award is not in respect of the acquisition of land from same village and similar to land acquired. The award referred and relied by Reference Court in respect of the acquisition of land from village Yenegur whereas the acquisition of land from village Bhosaga. The notification u/s. 4 of the Land Acquisition Act are also issued on different dates. The award passed

in LAR No.399 of 2013 is the subject matter of challenge before this Court, same has been stayed by this Court. Beside the decision in LAR No.399 of 2013, there is no other evidence to support the enhancement. It is further submitted that LAR No. 399 of 2013 has been decided on the basis of sale instance from village Murum in respect of which the notification u/s. 4 was issued on 21.07.2000. The sale instance of transaction of sale from village Murum registered in the year 1985 @ Rs.1829/- per R. in respect of the *bagayat* land has been considered as a basis for enhancement of the compensation. By giving general hike of 10% per year, the compensation payable has been assessed @ Rs.10,000/- per R. for bagayat land. The hike of 10% has been considered without any evidence to show that there was upward trend of increase in prices of similarly situated land on and after 1985. So also the compensation has been assessed @ Rs.10,000/- per R. by considering location of land acquired in said case as touching national highway. It is submitted that the sale instance as referred and relied in LAR No. 399 of 2013 could not have been formed basis to enhance the compensation. In absence of

any evidence to support the enhancement, the Reference Court should not have enhanced the compensation to the tune of 10 times for the *jirayat* land and 20 times for the *bagayat* land than the compensation assessed by the SLAO.

3] It is submitted that in the award the existence of number of trees has been mentioned on the basis of actual assessment made on spot. The Reference Court though rejected the report of private valuer, still the Reference Court without any evidence on record considered the existence of trees as 225 in the acquired land. In this background, learned counsel urge to stay the execution of the award.

4] On the other hand, learned counsel for the respondents—claimants supports the award passed by the Reference Court. It is submitted that the villages Murum, Yenegur and Bhosga are adjoining villages and in that view, the Reference Court was fully justified in relying upon the decision in LAR No.399 of 2013 to determine the compensation. It is submitted that the appellants have adduced no evidence to dislodge the case of the

respondents — claimants. Learned counsel further submits that the award in LAR No.399 of 2013 has been stayed subject to deposit of the amount in terms of the award passed by the Reference Court and urged to direct the appellants to deposit the entire amount.

5] On due consideration of the submissions advanced and challenges raised in the appeals and particularly award in LAR No.399 of 2013, which has been stayed, which is the basis of determination of the compensation by the Reference Court, the appellants have made out arguable case to be considered in appeals. The enhancement of compensation for the *jirayat* land is 10 times the compensation awarded by the SLAO and in respect of *bagayat* land the enhancement is about 20 times the compensation awarded by the SLAO. The view taken by the Reference Court to give general hike of 10% per year by acting upon the sale instances of more than 15 to 16 years old and treating the land touching national highway in absence of evidence to that effect *prima facie* not sustainable in law. In order to consider the general trend of the hike in prices @ 10% per year, there must be evidence to show that

there was continuous upward increase in prices @ 10% per year. Whether such evidence has been adduced or not needs to be considered in the appeals. I am, therefore, inclined to grant stay to the award passed by the Reference Court subject to deposit of the amount to the extent of 60% of the award passed by the Reference Court. Hence the following order :

ORDER

1] The applications are allowed.

2] The awards passed by the Reference Court which are under challenge in respective appeals are stayed subject to deposit of the amount to the extent of 60% of the award passed by the Reference Court within 12 weeks from the date of passing of the order. Failure to deposit the amount within stipulated period, stay granted stands vacated, without further reference to the Court unless the time is extended before due date to deposit the amount.

3] Civil Applications are disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC