

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

9 CIVIL APPLICATION NO.1211 OF 2021
IN FIRST APPEAL [STAMP] NO.22844 OF 2020

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THE EXECUTIVE ENGINEER, IRRIGATION
DEPARTMENT, STRENGTHENING DIVISION, OMERGA
VERSUS
ANKUSH GANPATI PAWAR THROUGH L.Rs.
ANNAPURNA & OTHERS

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Mr.Mukul S. Kulkarni, Advocate for the
applicant-appellant.
Mr.L.C.Patil, Advocate for the respondent
Nos.1A to 1D – claimants.
Mr.A.A.Jagatkar, AGP for the respondent nos.2
and 3-State.

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

P.C.

1] The applicant-appellant has moved
this application seeking stay to the
execution of the award on the ground raised
in appeal.

2] In brief, it is the contention of
the applicant-appellant that the award passed
by the Reference Court is not sustainable in
law. The compensation awarded by the
Reference Court is without any basis. It is
submitted that the SLAO has awarded the
compensation of the land acquired @
Rs.1,10,000/- per hector. The Reference Court

has enhanced the same @ Rs.3,40,000/- per acre, by relying upon the sale instance of 7 R. of land, which cannot be treated as comparable sale instance. It is submitted that under the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, there is prohibition for sale of the fragment of the land and any transaction made in violation of the provisions of the said Act, is illegal, void and cannot be acted in law. In that view, the Reference Court erred in relying upon the sale instance of 7 R. of land to form basis to enhance the compensation. It is submitted that the interest u/s. 28 of the Land Acquisition Act has been awarded from the date of possession, which is contrary to the Full Bench decision 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 applicant - appellant has good case to succeed in appeal. In case the execution of the award is not stayed, the purpose of filing of appeal would be frustrated.

3] On the other hand, learned counsel for the respondents – claimants support the

judgment and award passed by the Reference Court. It is submitted that appeal filed by the applicant - appellant is devoid of merits. The land has been acquired way back in the year 2004. The respondents are deprived of legitimate compensation for more than 15 years. It is submitted that the enhancement is based upon due assessment of the evidence adduced in the case.

4] Considering the submissions advanced in the light of challenge raised in appeal, I am of the view that the award passed by the Reference Court deserves to be stayed subject to deposit of the amount to the extent of 60% of the compensation awarded by the Reference Court. Hence the following order :

ORDER

1] The application is allowed.

2] There shall be interim relief in terms of prayer clause-A subject to deposit of the amount to the extent of 60% of the compensation awarded by the Reference Court within 12 weeks from the date of passing of the order.

3] Failure to deposit the amount within stipulated period, stay granted stands vacated without further reference to the Court unless time is extended before due date to deposit the amount.

4] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC