

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

21. CIVIL APPLICATION NO. 12838 OF 2022
IN FIRST APPEAL NO. 3160 OF 2021

Dattatray Dinakar Patil
Age : 46 years, Occu : Agriculturist,
R/o Dhupe (Kh.) Tq.Chopda,
Dist. Jalgaon.

...APPLICANTS

VERSUS

(1) Executive Director,
Tapi Irrigation Development
Corporation, Jalgaon,
Through Executive Engineer,
Hatnur Canal Division, Chopda,
District -Jalgaon,
Now Lower Tapi Project Division,
Amalner, Taluka – Amalner,
District -Jalgaon.

(2) District Collector, Jalgaon,
Through Special Land Acquisition Officer,
Upper Tapi Project (Hatnur), Jalgaon.

...RESPONDENTS

AND

- 2. CA/13747/2022 IN FIRST APPEAL NO. 3123 OF 2021 R.
- 3. CA/13755/2022 IN FIRST APPEAL NO. 3124 OF 2021
- 5. CA/13757/2022 IN FIRST APPEAL NO. 3126 OF 2021
- 6. CA/13749/2022 IN FIRST APPEAL NO. 3127 OF 2021
- 7. CA/13750/2022 IN FIRST APPEAL NO. 3128 OF 2021
- 8. CA/13751/2022 IN FIRST APPEAL NO. 3129 OF 2021
- 10. CA/13756/2022 IN FIRST APPEAL NO. 3132 OF 2021
- 11. CA/13754/2022 IN FIRST APPEAL NO. 3133 OF 2021
- 12. CA/13753/2022 IN FIRST APPEAL NO. 3134 OF 2021

13. CA/13752/2022 IN FIRST APPEAL NO.3135 OF 2021
14. CA/13763/2022 IN FIRST APPEAL NO. 3136 OF 2021
15. CA/13762/2022 IN FIRST APPEAL NO. 3137 OF 2021
16. CA/13761/2022 IN FIRST APPEAL NO. 3138 OF 2021
17. CA/13760/2022 IN FIRST APPEAL NO. 3139 OF 2021
18. CA/13764/2022 IN FIRST APPEAL NO. 3140 OF 2021
19. CA/13759/2022 IN FIRST APPEAL NO. 3141 OF 2021
20. CA/13758/2022 IN FIRST APPEAL NO. 3142 OF 2021
22. CA/12845/2022 IN FIRST APPEAL NO. 3161 OF 2021 W.
23. CA/12836/2022 IN FIRST APPEAL NO. 3162 OF 2021
24. CA/12849/2022 IN FIRST APPEAL NO. 3163 OF 2021
25. CA/12837/2022 IN FIRST APPEAL NO. 3164 OF 2021
26. CA/12842/2022 IN FIRST APPEAL NO. 3176 OF 2021
27. CA/12841/2022 IN FIRST APPEAL NO.3177 OF 2021
28. CA/12851/2022 IN FIRST APPEAL NO. 3178 OF 2021
29. CIVIL APPLICATION NO.12854 OF 2022
IN FA/3179/2021
30. CIVIL APPLICATION NO.12852 OF 2022
IN FA/3180/2021
31. CA/12859/2022 IN FIRST APPEAL NO. 3181 OF 2021
32. CA/12840/2022 IN FIRST APPEAL NO. 3182 OF 2021
33. CA/12839/2022 IN FIRST APPEAL NO. 3183 OF 2021
34. CA/12853/2022 IN FIRST APPEAL NO. 3184 OF 2021

35. CA/12843/2022 IN FIRST APPEAL NO. 3185 OF 2021
36. CIVIL APPLICATION NO.12858 OF 2022
IN FA/3186/2021
38. CA/12844/2022 IN FIRST APPEAL NO. 3188 OF 2021
39. CIVIL APPLICATION NO.12848 OF 2022
IN FA/3189/2021
40. CA/12846/2022 IN FIRST APPEAL NO. 3190 OF 2021
42. CA/12847/2022 IN FIRST APPEAL NO. 3192 OF 2021
43. CA/12618/2022 IN FIRST APPEAL NO. 3278 OF 2021
44. CA/12605/2022 IN FIRST APPEAL NO. 3280 OF 2021
45. CA/12615/2022 IN FIRST APPEAL NO. 3281 OF 2021
46. CA/12613/2022 IN FIRST APPEAL NO. 3282 OF 2021
48. CA/12611/2022 IN FIRST APPEAL NO. 3284 OF 2021
49. CA/12609/2022 IN FIRST APPEAL NO. 3285 OF 2021
50. CA/12619/2022 IN FIRST APPEAL NO. 3287 OF 2021
51. CA/12608/2022 IN FIRST APPEAL NO. 3286 OF 2021
52. CA/12621/2022 IN FIRST APPEAL NO. 3288 OF 2021
53. CA/12606/2022 IN FIRST APPEAL NO. 3290 OF 2021
54. CA/12620/2022 IN FIRST APPEAL NO. 3289 OF 2021
55. CA/12624/2022 IN FIRST APPEAL NO. 3291 OF 2021
56. CA/12622/2022 IN FIRST APPEAL NO. 3292 OF 2021
57. CA/12625/2022 IN FIRST APPEAL NO. 3293 OF 2021
58. CA/12626/2022 IN FIRST APPEAL NO. 3306 OF 2021

59. CA/12623/2022 IN FIRST APPEAL NO. 3307 OF 2021
60. CA/12628/2022 IN FIRST APPEAL NO. 3308 OF 2021
61. CA/12627/2022 IN FIRST APPEAL NO. 3309 OF 2021
62. CA/14330/2022 IN FIRST APPEAL NO. 3310 OF 2021
63. CA/14326/2022 IN FIRST APPEAL NO. 3311 OF 2021
64. CIVIL APPLICATION NO.14341 OF 2022
IN FA/3312/2021
65. CA/14333/2022 IN FIRST APPEAL NO. 3314 OF 2021
66. CA/14337/2022 IN FIRST APPEAL NO. 3315 OF 2021
67. CA/14328/2022 IN FIRST APPEAL NO. 3313 OF 2021
69. CA/14336/2022 IN FIRST APPEAL NO. 3318 OF 2021
70. CA/14340/2022 IN FIRST APPEAL NO. 3219 OF 2021
71. CA/14324/2022 IN FIRST APPEAL NO. 3320 OF 2021
72. CA/14331/2022 IN FIRST APPEAL NO. 3321 OF 2021
73. CA/14322/2022 IN FIRST APPEAL NO. 3322 OF 2022
74. CA/14323/2022 IN FIRST APPEAL NO. 3323 OF 2021
75. CA/14321/2022 IN FIRST APPEAL NO. 3325 OF 2021
76. CA/14332/2022 IN FIRST APPEAL NO. 3326 OF 2021
77. CA/14327/2022 IN FIRST APPEAL NO. 3327 OF 2021
78. CA/14334/2022 IN FIRST APPEAL NO. 3328 OF 2021
79. CA/14335/2022 IN FIRST APPEAL NO. 3329 OF 2021
80. CA/14313/2022 IN FIRST APPEAL NO. 3330 OF 2021

81. CA/14318/2022 IN FIRST APPEAL NO. 3331 OF 2021
82. CA/14339/2022 IN FIRST APPEAL NO. 3332 OF 2021
83. CIVIL APPLICATION NO.14342 OF 2022
IN FA/3333/2021
84. CIVIL APPLICATION NO.14338 OF 2022
IN FA/3334/2021
85. CA/14329/2022 IN FIRST APPEAL NO. 3335 OF 2021
86. CA/12616/2022 IN FIRST APPEAL NO. 3279 OF 2021

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Advocate for the respective Applicants : Mr. V. B. Patil
Advocate for Respondents : Mr. Sandesh R. Patil, Mr. Chetan T. Jadhav, Mr. P. R. Nangare, Mr. A. D. Pawar
AGP for Respondents-State : Mr. B. V. Virdhe, Mr. S. N. Kendre, Mr. S. R. Yadav (Lonikar), Mr. A. B. Chate, Mr. P. M. Kulkarni,

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 21.11.2022

ORDER :

Some of these applications are filed by the applicants for bringing legal representatives of respective deceased respondents / claimants. Further it appears that there are certain periods of delay in all these applications. However, considering the right to defend all the concerned applicants being the legal representatives of respective deceased respondents / claimants who are no more, are required to be brought on record.

2. As such, all these applications stand allowed by condoning the respective delay periods as mentioned therein. The Acquiring Body is directed to bring all such applicants on record being the legal representatives of deceased respondents / claimants. The amendment to be carried out forthwith.

3. Heard the learned counsel for all these respective applicants and also all the learned counsel appearing on behalf of the Acquiring Body in these applications. It is to be noted here that respective applicants have filed in all 86 applications for withdrawal of compensation amount which has been deposited by the Acquiring Body. Out of those 86 applications, this Court in 17 applications has already granted permission to the concerned applicants therein to withdraw the deposited amount of compensation on usual undertakings. As such 62 applications are now pending for passing withdrawal order.

4. It is pointed out by the learned counsel for the applicants in withdrawal applications that in 17 applications, wherein withdrawal of amount is granted, the claimants therein could not receive the compensation amounts since in

view of the technical difficulties, the office could not disburse those amounts. As such, now there are 62 applications are pending for passing withdrawal order and 17 applications for recalling of earlier withdrawal order filed by the learned counsel for the Acquiring Body in form of review applications are pending. Since all these applications are inter-connected, I have decided to pass common order in all these matters.

5. The learned counsel for the respective applicants / claimants, in all these applications, strongly submitted that the learned Reference Court has rightly determined the compensation by taking into consideration all the relevant aspects. He pointed out that the acquisition in these matters are old one and in the year 2010 fresh notification was again issued in respect of the acquisition. He pointed out that the Special Land Acquisition Officer had determined the compensation amount only on the basis of measurement of 2004, but the learned Reference Court rightly considered the matter by taking into consideration. Fresh constructions after 2004 and also the extended constructions in some of the matters. He submits that the report of valuer remained unchallenged since the Acquiring Body did not cross-examine

the said valuer. He pointed out that even the learned Reference Court did not believe the report of valuer completely, but in fact applied its mind to determine the compensation properly. He pointed out that the review applications taken out by the learned counsel for the Acquiring Body are falling out of the purview of Section 114 of the Code of Civil Procedure and therefore, cannot be allowed. He also relied upon following judgments on the aspect as to in what circumstances, all review applications are not maintainable.

(1) Executive Engineer, M.L.W. Vs. Vitthal Damodar Patil and another, 2019 DGLS (SC) 859

(2) Water and Land Management Institute, Kanchanwadi, Aurangabad Vs. Sudhakar Namdeo Gaikwad and others, reported in 2019 DGLS (Bom.) 1657

(3) Mohammad Yamin Naeem Mohammad Vs. State of Maharashtra, 2022 DGLS (Bom.) 2087

(4) Gundu Vs State of Maharashtra in Civil Appeal No.(s) 2481 of 2021.

6. The learned counsel for the applicants also pointed out that at the time of grant of stay, this Court had in fact asked the

Acquiring Body to deposit 75% of the amount of compensation granted under the impugned awards along with the accrued interest, but the Acquiring Body could deposit only 1/3rd amount of the compensation and thereafter, failed to deposit the remaining amount till today. He also submitted a chart showing that the compensation amount granted by the Reference Court is not at all exorbitant and considering the fact that only 1/3rd amount of the awarded amount is deposited by the Acquiring Body, the applicants are entitled for withdrawal of said 1/3rd amount as ordered earlier.

7. On the contrary, all the learned counsel for the Acquiring Body strongly opposed the withdrawal applications and also sought cancellation of the earlier order of withdrawal by filing the aforesaid review applications. According to them, the learned Reference Court has committed an error by passing exorbitant compensation which is more than 100 times as that of passed by the learned Special Land Acquisition Officer. They pointed out that the report of private valuer is relied by the learned Reference Court heavily without applying the mind. They also submitted chart showing as to how and in

what manner the compensation was enhanced. They submitted that the learned Reference Court has even granted compensation in respect of the construction despite there being no construction in the existence. They submitted that the exorbitant compensation awarded by the learned Reference Court needs to be set aside by remanding the matters back to the learned Reference Court, since there are apparent errors in the impugned awards. They pointed out that under the new Act, these appeals are required to be disposed of within six months and therefore, instead of granting withdrawal the appeals are to be heard expeditiously as the entire record and proceedings are received.

8. The learned counsel Shri A.D. Pawar, who is one of the learned counsel for the Acquiring Body also relied on following judgments of the Honourable Apex Court in the case of *Executive Engineer, M.L.W. Vs. Vitthal Damodar Patil and another*, reported in *2019 DGLS (SC) 859*, wherein validity of valuation report and evidence of valuer is discussed and it was found in the said judgment that the Court below did not analyse the evidence of valuer in proper perspective. It was also held that in case of valuer, his qualifications and eligibility

to issue the valuation report must be gone into. Thus, the learned counsel for the acquiring body submits that in this case also the report of private valuer has been wrongly relied.

9. It is significant to note that vide order dtd. 02.05.2022, this Court while granting stay to the execution of the impugned awards, had directed the Acquiring Body to deposit 75% of the total compensation amount and also permitted to deposit 1/3rd amount of the compensation as the same was ready with the Acquiring Body at the relevant time. It is extremely important to note that period of 15 weeks was given to the Acquiring Body for depositing 75% of the compensation amount under the said order, but till today even after lapse of said period of 15 weeks, the Acquiring Body could deposit only 43% of the compensation amount. Further, it is also important to note that all these contentions which are raised by the learned counsel for the Acquiring Body in review applications and the withdrawal applications were also raised at the time of arguing stay applications, but this Court had clearly observed that no merit of the appeals can be considered at the time of granting stay and opined that it was open for the parties to raise such objections at the time of final

hearing of the appeals. Similarly I am not deciding the appeals on merit, but only deciding the withdrawal applications. Though the learned counsel for the Acquiring Body pointed out as to how the learned Reference Court committed errors and granted exorbitant amount of compensation, but on perusal of charts submitted by rival counsel, it appears that there is no 100 times compensation awarded in all these matters. In exceptional circumstances, the Reference Court has awarded the compensation more than two times. But according to the learned counsel for the applicants, it was based on the valuer's report which remained unchallenged. Since Acquiring Body failed to cross-examine the said valuer despite there being re-opportunity for them. It is extremely important to note that this Court in 17 matters has already granted withdrawal of deposited amount of compensation to the concerned applicants since only 1/3rd amount of compensation has been deposited by the Acquiring Body. Even though in some matters there may be awards of compensation more than four times, but considering the fact that Acquiring Body has deposited only 1/3rd amount of compensation, the interest of the Acquiring Body appears to be safeguarded by allowing them to retain the remaining 2/3rd

amount of compensation. Therefore, considering all these aspects, the following order is passed :-

ORDER

1. All the withdrawal applications are hereby allowed and the respective applicants therein are permitted to withdraw the entire deposited amounts of compensation at this juncture by furnishing usual undertakings to the satisfaction of Registrar (Judicial) of this Court. Accordingly, all the Civil applications for withdrawal of amount are disposed of.

2. All the Review Applications for challenging the earlier order of withdrawal dtd. 23.08.2022 are hereby rejected and disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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shp/-