

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

**CIVIL APPLICATION NO.10392 OF 2023
IN FAST/20439/2022 WITH CA/15107/2022 IN FAST/20439/2022
WITH CA/15108/2022 IN FAST/20439/2022**

**BABRUWAN SHRIPATI KADAM DIED THROUGH LRS SHINDHU
BABRUWAN KADAM AND ORS
VERSUS
THE EXECUTIVE ENGINEER IRRIGATION DEPARTMENT OSMANABAD
AND ORS**

...
Advocate for Applicants : Mr. Naiknavare Ramesh Vitthal
AGP for Respondents/State: Mr. S. S. Dande
Advocate for Respondent No.1: Mr. M. C. Swami

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**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 19.08.2023**

PER COURT :

A. Order in Civil Application No.10392/2023 :

1. By this application, the applicants seek to withdraw the amount deposited by the acquiring body in pursuance of the award passed by the reference court.
2. Mr. Naiknavare, learned Advocate appearing for the applicants submits the reference court relying upon the earlier award in LAR No.479/2009 has granted market rate of the acquired land. He would submit that the enhancement granted by the reference court is almost four times of the rate determined by the Land Acquisition Officer. Hence, the applicant may be permitted to withdraw the entire amount deposited by the acquiring body.

3. Mr. Swami, learned Advocate appearing for the respondent - acquiring body opposes the application. He points out that there is no evidence to show that the lands under previous references are comparable with the lands which are the subject matter of this award. He would further invite attention of this Court to the interest granted under Section 28 of the Land Acquisition Act and submits that it is inconsistent with the law declared by the full judgment of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari** reported in **2016 (4) ALL MR 513**.
4. Having considered the submissions advanced and reasoning adopted by the reference court, it appears that, the previous land acquisition references are arising out of the same project under different notification. The reference court has determined the market value of the land, which is the subject matter of this reference, relying upon those awards. Therefore, the case is made out to grant partial withdrawal of the amount subject to the conditions. Hence, this Court proceeds to pass the following order:

ORDER

- a) Civil Application is partly allowed.
- b) The applicants are permitted to withdraw 75% of the amount deposited by the acquiring body, subject to usual undertaking to be furnished to the satisfaction of the Registrar [Judicial] of this Court.
- c) Rest of the amount be kept in fixed deposit in any Nationalized Bank initially for the period of one year with renewal clause.

d) The civil application is disposed of.

B. Order in Civil Application No.15107/2022 :

1. By this application, the applicant seeks to condone the delay of 2115 days caused in filing the appeal.
2. Mr. Swami, learned Advocate appearing for the applicant invites attentions of this Court towards Paragraph Nos.2 and 3 of the application to contend that, the delay is occasioned on account of administrative reasons and procedural aspects.
3. Mr. Naiknavare, the learned Advocate appearing for the respondents opposes the prayer.
4. Considering the reasons as stated in Paragraph Nos.2 and 3 of the application as well as the fact that the process of filing was hampered on account of Covid-19, the case is made out to condone the delay. Hence, this Court proceeds to pass the following order:

ORDER

- a) Civil Application is allowed.
- b) The delay of 2115 days caused in filing the appeal is condoned.
- c) Appeal be registered subject to removal of office objections, if any.
- d) The civil application is disposed of.

C. Order in Civil Application No.15108/2022 :

1. Mr. Swami, learned Advocate appearing for the applicant submits that the entire amount as per award has been deposited with the Registry of this Court.
2. Mr. Naiknavare, learned Advocate appearing for the respondent do not dispute the aforesaid statements.
3. In that view of the matter, civil application is allowed in terms of prayer clause – [B] and the same is disposed of.

D. Order in First Appeal :

1. Heard.
2. On registration of appeal, appeal is '**Admitted**'.
3. Print and paper book dispensed with.
4. Appellant to remove all office objections.

**[S. G. CHAPALGAONKAR]
JUDGE**

Sameer