



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9069 OF 2021
IN
FIRST APPEAL NO.3171 OF 2023

The Chief Officer,
Municipal Council, Ambad,
Tq. Ambad, Dist. Jalna,
Through Vikram Maruti Mandurke,
Age 33 yrs., Occ. Service,
R/o Ambad, Tq. Ambad,
Dist. Jalna.

... Applicant

... **Versus** ...

- 1 Baban Anna Namde,
Age 48 yrs., Occ. Agri.,
 - 2 Madhav Anna Namde,
Age 43 yrs., Occ. Agri.,
 - 3 Ashok Anna Namde (**Died**)
Since deceased through his legal representatives -
 - A) Ganga w/o Ahok Namde,
Age 39 yrs., Occ. Agri.,
 - B) Akash Ashok Namde,
Age 18 yrs., Occ. Education,
 - C) Tushar Ashok Namde,
Age 13 yrs., Occ. Education,
U/G of Ganga w/o Ashok Namde,
- 3A) to 3C) are r/o Near Omshanti College,
Shivaji Nagar, Ambad, Tq. Ambad,
Dist. Jalna.

4 Shivling Anna Namde,
Age 38 yrs., Occ. Agri.,

5 Siddhu Anna Namde,
Age 36 yrs., Occ. Agri.,

Applicant Nos.1, 2, 4 and 5 are
r/o Om Shanti Nagar, Ambad,
Tq. Ambad, Dist. Jalna.

6 The State of Maharashtra
Through The Collector,
Jalna.

7 The Sub Divisional Officer,
Ambad,
Near old Tahsil Office,
Ambad, Tq. Ambad,
Dist. Jalna.

... Respondents

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Mr. S.S. Patunkar, Advocate h/f J.P. Legal Associates for applicant

Miss. Pradnya Talekar, Advocate for respondent Nos.1 to 5

Mr. S.D. Ghayal, AGP for respondent Nos.6 and 7

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**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 13th OCTOBER, 2023

PRONOUNCED ON : 29th NOVEMBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed seeking stay to the execution of Judgment and Award dated 25.10.2018 passed in Land Acquisition Reference No.794/2013 by learned 4th Joint Civil Judge Senior Division, Jalna of which Special Darkhast No.148/2019 is pending. It will not be out of place to mention here that the appeal was filed along with application for condonation of delay and it came to be allowed on 19.08.2023.

2 Heard learned Advocate Mr. S.S. Patunkar holding for J.P Legal Associates for applicant, learned Advocate Miss. Pradnya Talekar for respondent Nos.1 to 5 and learned AGP Mr. S.D. Ghayal for respondent Nos.6 and 7.

3 The learned Advocate for the appellant – acquiring body submitted that the learned reference Court has enhanced the compensation manifolds as compared to the compensation granted by Special Land Acquisition Officer. The said enhancement is illegal and by not taking into consideration the principles laid down in various authorities by this Court as well as Hon'ble Supreme Court. There was no evidence adduced by the original claimants which could justify their demand for enhancement in the compensation. In order to support his submissions he has relied on the

decision in **Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad (A.P) and others** [1994 (4) SCC 595], **Ramlal Deochand Shah vs. State of Maharashtra and another** [AIR 2013 SC 3452] and **Cement Corporation of India Ltd. vs. Purya and others** [(2004) 8 SCC 270]. The learned trial Judge has wrongly relied on sale transaction and had not taken into consideration as to whether it was admissible or not. Now, the appeal is admitted and even substantial amount has been paid to the claimants, but as regards further difference is concerned, stay deserves to be granted, otherwise it would amount to injustice to acquiring body.

4 Per contra, the learned Advocate appearing for the original claimants objected the application and submitted that even as per the due amount i.e. amount that was awarded by Special Land Acquisition Officer of Rs.2,00,00,000/- ought to have been deposited. What has been granted or allowed to be withdrawn to the claimant is Rs.1,03,00,000/-. The land owned by the claimants has been acquired and for which the acquiring body was duty bound to pay just compensation. Special Land Acquisition Officer has given meagre amount and, therefore, further stay need not be granted. The appellant should be directed to deposit the remaining amount and the original claimants be allowed to withdraw the same.

5 Here, it will not be out of place to mention that it appears that

the original claimants are not even satisfied with whatever enhancement that has been granted by the learned reference Court. They have also filed appeal for enhancement in the compensation. Here, in this appeal the acquiring body has come with a case that whatever enhancement has been granted is beyond the legal scope and, therefore, this Court while condoning the delay asked the registry to tag the present appeal with the appeal that has been filed by the claimants. Definitely, it appears that as compared to the amount that was granted by Special Land Acquisition Officer the enhancement made by the reference Court is manifolds. It would be the question to be determined, as to whether the said enhancement is justified or not, which can be taken at the stage of final hearing. Since the appeal filed by the original claimants is also pending and the present appeal is also admitted as well as the fact that substantial amount has already been deposited and withdrawn by the claimants, it is necessary to stay the execution of the impugned Judgment and Award till the decision of the appeal. If the stay is not granted it will cause injustice to the acquiring body. This Court must keep some amount with it so that an assurance is given to the appellant – acquiring body that in case their appeal gets allowed, then the said amount to be safeguarded, otherwise it would become difficult to the acquiring body to recover the said amount. Mere undertaking will not solve the problem and, therefore, application deserves to be allowed. Accordingly following order is

passed.

ORDER

1 Application stands allowed.

2 There shall be stay to the impugned Judgment and Award dated 25.10.2018 passed in Land Acquisition Reference No.794/2013 and the further proceedings in Special Darkhast No.148/2019 pending before 4th Joint Civil Judge Senior Division, Jalna, during the pendency and decision of First Appeal No.3171 of 2023.

3 Application stands disposed of accordingly.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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