

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

WRIT PETITION NO.11678 OF 2022

**BALAJI GYANOBA UMATE
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS**

...
Mr. Ajeet B. Kale, Advocate a/w Ms. S.A. Kale, Advocate for
Petitioner
Mr. N.P. Bangar, Advocate for Respondent No.3
...

WITH WRIT PETITION NO.11680 OF 2022

**ANAND VITTHAL ZAMBRE
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS**

...
Mr. Ajeet B. Kale, Advocate a/w Ms. S.A. Kale, Advocate for
Petitioner
Mr. N.P. Bangar, Advocate for Respondent No.3
...

WITH WRIT PETITION NO.11679 OF 2022

**BALAJI GYANOBA UMATE
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS**

...
Mr. Ajeet B. Kale, Advocate a/w Ms. S.A. Kale, Advocate for
Petitioner
Mr. S.S. Kulthe Chintamani, Advocate for Respondent No.1&2
Mr. N.P. Bangar, Advocate for Respondent No.3
...

**CORAM : NITIN B. SURYAWANSHI, J.
DATE : 03RD OCTOBER, 2023**

PER COURT :

1. Since these petitions involve similar question of law and fact, they were heard together and are being decided by this common order.

2. These petitions challenge orders dated 02/11/2022, passed by learned Principal District Judge, Latur, below Exhibit-5 in arbitration cases filed by respondent No.3 i.e. Arbitration Case Nos. 153/2021, 154/2021 and 155/2021, thereby staying awards dated 27/11/2020, passed by learned Arbitrator.

3. Facts which are not in dispute are that, lands of petitioners are acquired for widening of National Highway No.361, between Ausa and Chakur. Second respondent passed award on 31/08/2019, thereby determining compensation under Section 3(G) (1) of the National Highways Act. Petitioners filed arbitration proceedings before learned Arbitrator, for enhancement of compensation. Learned Arbitrator/Collector, by awards dated 27/11/2020, enhanced the compensation by Rs.610/- in W.P. No.11678/2022, by Rs.706/- in W.P. No.11679/2022 and by Rs.2096/- in W.P. No.11680/2022, per sq. meters. Third respondent challenged said awards dated 27/11/2020, by filing applications under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the said Act'), before the District Court, Latur. Along with it, applications Exhibit-5 are filed seeking stay to the arbitral award. Learned Principal District Judge, Latur, has allowed said applications as follows;

"(a) The applicant/National Highways Authority of India, Project Implementation Unit – Nanded to

deposit half of the awarded amount in the trial Court till 18.11.2022.

(b) As the amount of compensation determined by the Competent Authority for Land Acquisition is already deposited and withdrawn by the respondent No.1, the aforesaid amount (mentioned in Clause-(a)) shall remain in the custody of the trial Court till final disposal of the present proceeding on merits.

(c) The trial Court shall take immediate steps to invest the deposited amount (as per directions given in Clause-(a)) herein-above in any Nationalized Bank in fixed deposit scheme till final disposal of the present proceeding.

(d) The present proceeding is expedited.

(e) Both the parties shall extend their co-operation to this Court to decide the present proceeding on merits, as early as possible."

4. Accordingly, third respondent has deposited 50% amount in the District Court. By these petitions, petitioners challenge clause (b) of said orders, which according to them impliedly denies withdrawal of 50% amount deposited by third respondent pursuant to the orders passed by District Court. A direction is also sought by petitioners to third respondent to deposit entire decretal amount and permission to withdraw the same.

5. Heard learned advocate for petitioners, learned advocate for respondent No.3 and learned advocate for respondent Nos.1 and 2 in W.P. No.11679/2022. Perused memo of writ

petitions, annexures thereto, the impugned orders and affidavit-in-reply filed by respondent No.3 as well as citations relied upon by the parties.

6. Learned advocate for petitioners has relied on order passed by the Apex Court in Petition for Special Leave to Appeal (C) No.12409/2022, which according to him is the order passed in favour of claimants from same award. He submits that lands of those claimants were acquired for widening of National Highway No.361 and only difference between their case and present case is that they are from village Ausa, whereas petitioners are from village Chakur. Reliance is also placed in judgment of the Apex Court in *National Highways Authority of India Vs. Sheetal Jaidev Vade and Others, 2022 LiveLaw (SC) 705*, which according to petitioners is passed in favour of similarly situated claimants.

7. Learned advocate for respondent No.3 has vehemently opposed petitions contending that applications filed under Section 34 of the said Act, are at final stage and therefore, let the Principal District Judge decide the same on merit. Petitioners, at this stage, are not entitled for withdrawal of amount.

8. In Petition for Special Leave to Appeal (C) No.12409/2022, the Apex Court has released 50% of amount awarded by Arbitrator, to the claimants therein. It appears that

lands of those claimants were acquired for the same purpose i.e. widening of National Highway No.361 between Ausa and Chakur. Therefore, petitioners can be said to be similarly circumstanced like those claimants. Judgment passed in *Sheetal Jaidev Vade and Others* (supra) also supports the case of petitioners.

9. Learned advocate for third respondent has opposed the contention of petitioners claiming that, probably in the matters in which Apex Court has permitted withdrawal of 50% of awarded amount, there was no stay operating in favour of third respondent. This cannot be a ground to deny relief claimed by petitioners when petitioners are similarly circumstanced like that of those claimants, who are permitted to withdraw 50% of award amount.

10. In present matters, enhancement awarded by learned Arbitrator is to the extent of Rs.610/- per sq. meter, Rs.2096/- per sq. meter and Rs.706/- per sq. meter, respectively and only 50% of that enhanced amount is being permitted to be withdrawn by petitioners, on conditions. In the result, writ petitions are allowed on following terms:-

- (I) Petitioners are permitted to withdraw 50% of enhanced compensation amount, awarded by learned Arbitrator, which is already deposited in the District Court, by furnishing solvent surety/security to the like amount,

along with undertaking.

(II) District Court is requested to conclude hearing of applications filed under Section 34 of the said Act and deliver judgment within a period of three months from the date of receipt of writ of this order.

11. Needless to state that, these directions shall be subject to the final outcome of applications filed under Section 34 of the said Act.

(NITIN B. SURYAWANSHI, J.)