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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO. 1690 OF 2024

GORAKSHNATH PARAJI KADAM AND ANOTHER

VERSUS

THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

914 WRIT PETITION NO. 9994 OF 2024

DEVIDAS VITTHAL KADAM AND OTHERS

VERSUS

THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

915 WRIT PETITION NO. 9995 OF 2024

BHASKAR CHANDRABHAN KADAM AND ANOTHER

VERSUS

THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

916 WRIT PETITION NO. 9996 OF 2024

CHAGAN AHILAJI KADAM AND OTHERS

VERSUS

THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

917 WRIT PETITION NO. 9997 OF 2024

PIRTAJI RAKHMAJI KADAM AND OTHERS

VERSUS

THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

918 WRIT PETITION NO. 9998 OF 2024

ANJANABAI SAHEBRAV KADAM

VERSUS

THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

919 WRIT PETITION NO. 9999 OF 2024

RAJENDRA RAVSAHEB KADAM AND ANOTHER
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
920 WRIT PETITION NO. 10000 OF 2024

JAYRAM BABRAURAV KADAM AND ANOTHER
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
921 WRIT PETITION NO. 10001 OF 2024

RAJENDRA RAVSAHEB KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
922 WRIT PETITION NO. 10002 OF 2024

BALASAHEB KONDAJI KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
923 WRIT PETITION NO. 10003 OF 2024

SHANKAR BAJIRAV KADAM AND OTHERS
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
924 WRIT PETITION NO. 10004 OF 2024

SHIVAJI BAJIRAV KADAM KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
925 WRIT PETITION NO. 10005 OF 2024

SHANTA RAVSAHEB KADAM AND OTHERS
VERSUS

THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
926 WRIT PETITION NO. 10006 OF 2024

SAVITRA BALWANT KADAM DECEASED BEHALF RAVSAHEB SAVITRA
KADAM
VERSUS

THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
927 WRIT PETITION NO. 10007 OF 2024

GOVARDHAN MURLIDHAR KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
928 WRIT PETITION NO. 10008 OF 2024

SURYABHAN SAHEBRAO KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
929 WRIT PETITION NO. 10009 OF 2024

AMBADAS BHAGWAT KADAM AND OTHERS
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
930 WRIT PETITION NO. 10010 OF 2024

GORKSHNATH BABURAV KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
931 WRIT PETITION NO. 10011 OF 2024

YAMUNABAI BHASKAR KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

932 WRIT PETITION NO. 10012 OF 2024

INDRAJEET RAMBHAJI KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

933 WRIT PETITION NO. 10013 OF 2024

BALASAHEB MARUTI PATARE AND OTHERS
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

934 WRIT PETITION NO. 10015 OF 2024

TUKARAM VISHVNATH KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

935 WRIT PETITION NO. 10016 OF 2024

GORKSH SHRIDHAR KADAM AND ANOTHER
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

936 WRIT PETITION NO. 10017 OF 2024

SURYABHAN SAHEBRAO KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

937 WRIT PETITION NO. 10018 OF 2024

CHAGAN ABHILAJI KADAM
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND

938 WRIT PETITION NO. 10019 OF 2024

CHANDRABHAN MOHAN KADAM
VERSUS

THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
939 WRIT PETITION NO. 10020 OF 2024

MADHUKAR DEVRAM KADAM AND OTHERS
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
940 WRIT PETITION NO. 10021 OF 2024

JAYRAM BABAAURAV KADAM AND ANOTHER
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
AND
941 WRIT PETITION NO. 10022 OF 2024

TABAJI DHONDIBA KARALE
VERSUS
THE UNION OF INDIA
AND
942 WRIT PETITION NO. 10023 OF 2024

BABASAHEB VISHWANATH BHAGAT
VERSUS
THE UNION OF INDIA, THROUGH ITS SECRETARY
AND
943 WRIT PETITION NO. 10024 OF 2024

LAXMAN FAKIRA BHAGAT
VERSUS
THE UNION OF INDIA
AND
944 WRIT PETITION NO. 10025 OF 2024

ANIL RAMBHAU IWALE
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY
AND
945 WRIT PETITION NO. 10026 OF 2024

BHAUSAHEB SHRIPATI BHAGAT
VERSUS
THE UNION OF INDIA
AND
946 WRIT PETITION NO. 10027 OF 2024

EKNATH SAVLERAM BHAGAT
VERSUS
THE UNION OF INDIA
AND
948 WRIT PETITION NO. 10038 OF 2024

SUDAM LAXMAN BHAGAT
VERSUS
THE UNION OF INDIA
AND
949 WRIT PETITION NO. 10039 OF 2024

MADHAV NAMDEV SHINDE
VERSUS
THE UNION OF INDIA

Mr.S.B.Tarde, Advocate for the Petitioners.

Mr.A.B.Girase, Government Pleader a/w Mr.S.K.Tambe, Additional GP, Mr.M.M.Nerlikar, Mr.N.D.Batule, Mr.S.R.Wakale, Mr.V.M.Kagne, Ms.Neha Kamble, AGPs' for the Respondent/State in respective Petitions.

Mr.A.G.Talhar, DSGI a/w Mr.R.B.Bhosale, Mr.S.W.Munde, Mr.A.N.Patale, Mrs.Sudha Chintamani, Mr.R.B.Bagul, Mr.D.B.Gaikwad, Mr.S.S.Deve, Mr.M.A.Golegaonkar, Standing Counsels for Union of India in respective Petitions.

Mr.A.P.Bhandari i/b Hinge and Deshmukh Association, for Respondent No.4 in WP No.1690/2024.

Mr.Sagar Ladda, Advocate for the Responent/N.H.A.I.

(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)

DATE : SEPTEMBER 12, 2024

PER COURT :

1. In all these matters, the Petitioners are before the Court with an identical grievance. The Acquiring Authority has challenged the award before the Arbitrator under Section 3G(5) of the National Highways Act, 1956. After lodging of the proceedings, no steps have been taken by the Acquiring Authority for conducting the matters. No interim relief has been sought, much less, granted. The grievance is that, neither the amount is deposited before the Arbitrator, nor is it paid to the Claimants.

2. Having considered the submissions of the learned Advocates and having perused the affidavits in reply, there are several contentious issues as regards the alleged escalation of the price of the land, the plantations made and the purported improvements carried out, etc., with an object of orchestrating an unusual and unjustified rise in the compensation.

3. With the assistance of the learned Advocates, we have perused Sections 9 and 17 of the Arbitration and Conciliation Act, 1996, which read as under:-

“9. Interim measures, etc., by Court.—

(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral

- proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.*
- (3) *Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]”*

- “17. *Interim measures ordered by arbitral tribunal.—*
- (1) *A party may, during the arbitral proceedings, apply to the arbitral tribunal—*
- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or*
 - (ii) for an interim measure of protection in respect of any of the following matters, namely:—*
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*
 - (b) securing the amount in dispute in the arbitration;*
 - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*
 - (d) interim injunction or the appointment of a receiver;*
 - (e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for*

the purpose of, and in relation to, any proceedings before it.

- (2) *Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.”*

4. A party can make an application for securing the amount in dispute in arbitration. There is no dispute that the arbitration proceedings are pending since April, 2023. Notices have been issued and the parties have appeared in the said proceedings.

5. Thus, there is a statutory provision, which is engrafted in the Arbitration and Conciliation Act, 1996, for the purposes of securing the interest of the party, and that provision enables the Claimants before us to seek an order from the Arbitrator for securing the amount, granted by the competent authority, during the pendency of the proceedings in arbitration. Such applications have still not been made by these Petitioners.

6. In the affidavit in reply, it is seriously canvassed by NHAI,

that these Petitioners have caused improvements in the form of plantation of fruit bearing trees, construction of compound wall, construction of concrete road, sheds, underground storage water tank, etc. after publication of the notification under Section 3-A of the National Highways Act, 1956. It is also canvassed that bloated or exaggerated sale instances have been cited in order to orchestrate higher compensation amount. According to the NHAI, the assets are improved and created after the notification under Section 3-A and this needs proper investigation.

7. The learned Advocates for the Petitioners have informed us that in some cases, some Claimants have filed their applications seeking a direction from the Arbitrator to the Acquiring Body to deposit the amounts before the Arbitrator. Such applications are invariably kept pending.

8. In view of the above, **these Writ Petitions are disposed off** with the following directions:-

(a) Keeping in focus several contentious issues, we deem it appropriate to direct these Petitioners to tender their applications for

seeking directions from the Arbitrator to order the NHAI to deposit the amounts before the Arbitrator. Such applications shall be filed until 25.09.2024.

(b) The Advocate representing the NHAI or any Authority concerned, before the Arbitrator, shall collect such applications, which would be filed until 25.09.2024.

(c) The NHAI shall enter their replies, on or before 03.10.2024.

(d) The Arbitrator would permit the learned Advocates to canvass their submissions on 07.10.2024 and thereafter, pass an order on the said applications, on 21.10.2024.

(e) The parties to the arbitration shall, accordingly, appear before the Arbitrator on 25.09.2024, 03.10.2024, 07.10.2024 and 21.10.2024. Notices are dispensed with.

(f) Needless to state, if the Arbitrator directs the NHAI to deposit any portion of the compensation amount, it shall specify a particular duration, in view of Rule 3 of the National Highways (manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019.

(g) Since we are informed that there are several such

applications pending, we deem it appropriate to record that such applications, either for interim stay or for securing the amount in dispute in arbitration, shall not be kept pending beyond 60 days from the date of appearance of the parties.

(h) Adjournments should not be granted on unreasonable or trivial ground and the Arbitrator would endeavour to decide such applications, within 60 days.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)