IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2525 OF 2016

URMILA RAHAGAJI HADGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 487 OF 2014

SHRIRAM NAMDEO HADGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 488 OF 2014

VYANKAT BAPU KHATKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 489 OF 2014

VISHNU BAPU KHATKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 490 OF 2014

BARIKRAO NAMDEO HADGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 4467 OF 2016

DEEPAK TRIMBAK HADGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 4468 OF 2016

SANTOSH TRIMBAK HADGALE AND ANOTHER
VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 4469 OF 2016

SOPAN RAHAGAJI HADGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 4470 OF 2016

SANTOSH TRIMBAK HADGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 4471 OF 2016

DNAYNOBA @ DNYANDEO KONDIBA JEKATE
(DIED THROUGH HIS L.RS.)
ANVARABAI DNAYNOBA @ DNYANDEO JEKATE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
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Advocate for the appellants: Mr. A.R. Devkate
AGP for respondent Nos. 1 and 2: Mr. S.S. Dande
Advocate for respondent No.3 (In F.A. No. 2525 of 2016): Mr. G.B. Rajale
Advocate for respondent No.3 (In F.A. No. 4467, 4468, 4469, 4470 and 4471 of 2016): Mr. N.S. Shah h/f Mr. A.R. Kale
Advocate for respondent No.3 (In F.A. No. 487, 488, 489, 490 of 2014): Mr. D.B. Pawar
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WITH
FIRST APPEAL NO. 1821 OF 2015

THE EXECUTIVE ENGINEER, MEDIUM PROJECT NO.2, OSMANABAD
VERSUS
SHRIRAM NAMDEO HADGALE AND ANOTHER

WITH
FIRST APPEAL NO. 1822 OF 2015

THE EXECUTIVE ENGINEER, MEDIUM PROJECT NO.2, OSMANABAD
VERSUS
VISHNU BAPU KHATKE AND OTHERS

WITH
FIRST APPEAL NO. 1823 OF 2015

THE EXECUTIVE ENGINEER, MEDIUM PROJECT NO.2, OSMANABAD
VERSUS
BARIKRAO NAMDEO HADGALE AND OTHERS

WITH
FIRST APPEAL NO. 1824 OF 2015

THE EXECUTIVE ENGINEER, MEDIUM PROJECT NO.2, OSMANABAD
VERSUS
VYANKAT BAPU KHATKE AND OTHERS

WITH
FIRST APPEAL NO. 411 OF 2017

THE EXECUTIVE ENGINEER, MEDIUM PROJECT NO.2, OSMANABAD
VERSUS
SANTOSH TRIMBAK HADGALE AND OTHERS

WITH
FIRST APPEAL NO. 412 OF 2017

THE EXECUTIVE ENGINEER, MEDIUM PROJECT NO.2, OSMANABAD
VERSUS
URMILA RAHAGAJI HADGALE AND OTHERS

WITH
FIRST APPEAL NO. 413 OF 2017

THE EXECUTIVE ENGINEER, MEDIUM PROJECT NO.2, OSMANABAD
VERSUS
SANTOSH TRIMBAK HADGALE AND OTHERS

WITH
FIRST APPEAL NO. 414 OF 2017

THE EXECUTIVE ENGINEER, MEDIUM PROJECT NO.2, OSMANABAD
VERSUS
DNAYNOBA @ DNYANDEO KONDIBA JEKATE
(DIED THROUGH HIS L.RS.)
ANVARABAI DNAYNOBA @ DNYANDEO JEKATE AND OTHERS

WITH
FIRST APPEAL NO. 415 OF 2017

THE EXECUTIVE ENGINEER, MEDIUM PROJECT NO.2, OSMANABAD
VERSUS
SOPAN RAHAGAJI HADGALE AND OTHERS

WITH
FIRST APPEAL NO. 416 OF 2017

THE EXECUTIVE ENGINEER, MEDIUM PROJECT NO.2, OSMANABAD
VERSUS
DEEPAK TRIMBAK HADGALE AND OTHERS
….
Advocate for the appellants: Mr. D.B. Pawar
Advocate for respondents-claimants (in F.A. Nos. 1821, 1822, 1823 and 1824 of 2015) : Mr. A.R. Devkate
AGP for respondents-State and L.A.O: Mr. S.S. Dande
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CORAM : V. K. JADHAV, J.
DATED : 21st FEBRUARY, 2017

PER COURT:-

1. By consent of learned counsel for the respective parties, heard finally at admission stage.

2. Being aggrieved by the common judgment and award passed by the Civil Judge, Senior Division, Paranda, dated 27.2.2014 in L.A.R. No. 691 of 2011 and other connected matters and the judgment and award passed by the same Court, dated 18.12.2013 in L.A.R. No. 543 of 2011 and other connected matters, the original claimants in all Reference petitions preferred first appeal Nos. 2525 of 2016, 487 of 2014, 488 of 2014, 489 of 2014, 490 of 2014, 4467 of 2016, 4468 of 2016, 4469 of 2016, 4470 of 2016 and 4471 of 2016 for enhancement of the compensation whereas against the very same judgment and award, the acquiring body has also preferred appeal bearing Nos. 1821 of 2015, 1822 of 2015, 1823 of 2015, 1824

of 2015, 411 of 2017, 412 of 2017, 413 of 2017, 414 of 2017, 415 of 2017 and 416 of 2017.

3. Brief facts giving rise to the present appeals are as follows:-

a) The Government has acquired the lands for the purpose of rehabilitation of village Pandharewadi, Eastern side, Tq. Paranda and a notification to that effect under Section 4 of the Land Acquisition Act was published in the Government Gazette on 14.06.2001. The Special Land Acquisition Officer has passed award on 15.12.2004 (for the sake of convenience, the parties are referred by their original status in the proceeding before the Reference court). The particulars of the land of the claimants, acquired by the State, are mentioned in detail in the impugned judgment and award. The Special Land Acquisition Officer has awarded compensation at the rate of Rs.23,809/- per Hectare, ranging from Rs.9522/- to Rs.12345/- per acre. Being aggrieved by the inadequacy of compensation, as awarded by the Special Land Acquisition Officer, the claimants preferred reference petitions, as aforesaid.

b) According to the claimants, their acquired lands are fertile and irrigated lands with water of well having sufficient water throughout the year. The claimants used to take double/triple crops yearly in the acquired lands. According to the claimants, at the relevant time, the market price in the vicinity was Rs.1,00,000/- per acre, however, the S.L.A.O. has not considered the same and awarded inadequate compensation. It has contended that there were fruit bearing trees and pipeline in the acquired lands, however, the S.L.A.O. has not paid any compensation for it. The acquired lands are situated within the command area of sugar factory however, the S.L.A.O. has not considered the same and awarded very meager amount as compensation.

c) The respondents acquiring body and the State have resisted all reference petitions by filing written statements. The respondents have not disputed the extent of ownership and possession of the claimants and purpose for which the lands are acquired. The respondents have specifically denied that the acquired lands are irrigated, black cotton soil and fertile lands. It has also not denied that the market price in the vicinity is of Rs.1,00,000/- per acre at the time of publication of Section 4 notification. It has stated that the claimants have claimed exorbitant amount of compensation, the same is not as per the market price prevailing in the said area. It has also contended that the S.L.A.O. awarded just and adequate compensation after considering the fertility of the lands and on scrutinizing the sale instances and further considering the market value of the acquired land on its basis.

d) The claimants led common evidence and placed their reliance on sale deed dated 07.02.2000 in respect of the land situated in the same village viz. Pandharewadi, wherein the land admeasuring 30 R was sold by Popat Tatya Pawar to Pratap Raosaheb Hare and Sharad Raosaheb Takle, for total consideration of Rs.80,000/- corresponds to Rs.1,06,666/- per acre. According to the claimants, said sale instance pertains to non irrigated land, however, the acquired lands are irrigated lands. The learned C.J.S.D. Paranda, by impugned judgment and award, as referred above, awarded compensation for the acquired lands at the rate of Rs.53,333/- per acre. Being aggrieved by the same, the claimants have preferred first appeal Nos. 2525 of 2016, 487 of 2014, 488 of 2014, 489 of 2014, 490 of 2014, 4467 of 2016, 4468 of 2016, 4469 of 2016, 4470 of 2016 and 4471 of 2016 for enhancement of the compensation and the respondent acquiring body has also preferred first appeals bearing Nos. 1821 of 2015, 1822 of 2015, 1823 of 2015, 1824 of 2015, 411 of 2017, 412 of 2017, 413 of 2017, 414 of 2017, 415 of 2017 and 416 of 2017 contending that the compensation awarded by the Reference Court is exorbitant.

4. Learned counsel for the claimants submits that the acquired

lands were black cotton soil, fertile and equal in level in all parts. The acquired lands are irrigated lands by water of well having sufficient water source throughout the year. The claimants were raising the double and triple crops like Chilly, groundnut, wheat, sugarcane, cotton, sunflower etc. and they were getting annual income of Rs.1,00,000/- per acre after deducting the costs for cultivation. The learned counsel for the claimants submits that the market price of the acquired lands was more than Rs.1,00,000/- per acre, however, the Reference Court has not considered the same. Even though the S.L.A.O. has paid compensation to some of the claimants for the pipeline laid in their acquired lands, the Reference Court erroneously come to the conclusion that the acquired lands are non irrigated lands. Learned counsel submits that the claimants have placed their reliance on sale deed dated 07.02.2000, whereby land admeasuring 30 R was sold for total consideration of Rs.80,000/-. The Reference Court has though erroneously treated the acquired lands as non irrigated lands but ought to have awarded the compensation as per the consideration mentioned in the said sale instance. The land under sale instance is also Jirayat land, however, the Reference court has treated the said land as Bagayat land and reduced half of the consideration amount of sale instance and awarded compensation for the acquired lands by treating the lands as Jirayat lands. The Reference court ought to have awarded the compensation at double rate of aforesaid sale instance, as the land under the said sale instance is Jirayat land. Even assuming that the acquired lands are Jirayat lands, the Reference court ought to have awarded the compensation as per the market price, as reflected in the said sale instance, which is of Jirayat land.

5. Learned counsel for the claimants submits that the respondent acquiring body/State has not raised the issue before the Reference court that the land under sale instance is small piece of land and the same cannot be a basis to award the compensation at the enhanced rate as per the consideration shown in the said sale instance. Furthermore, the aforesaid sale instance is for the land admeasuring 30 R, which cannot fairly be termed as a small piece of land to justify application of principle of deduction on the basis of smallness of land.

Learned counsel for the claimants, in order to substantiate his contentions, placed reliance on the following judgments:-

i) State of Maharashtra and Anr. vs. Valu Yesu Suryawanshi (Nhavi), reported in 2008 (4) Mh.L.J. 626

ii) Dhondiba Sakharam Thange vs. The State of Maharashtra, reported in (2003) 105 (4) Bom.L.R. 369.

6. Learned counsel appearing for the respondent acquiring body

submits that the claimants have filed 7x12 extracts of the acquired lands and in the said 7x12 extracts, the acquired lands have been shown as non irrigated lands. There is no entry of well in other rights column of 7x12, pertaining to the acquired lands. The learned Judge of Reference court has observed that the claimants have not filed any relevant documents, such as electricity bills etc. to point out that the acquired lands were being irrigated by the water of well. Further the certified copy of award and “E” statement, also point out that the acquired lands are non irrigated lands. Learned counsel submits that even in the common judgment, the claimant, who has been examined before the Reference court, has admitted in his cross examination that there is no entry about irrigation of land with well water. He further admitted that no documentary evidence is placed on record in respect of pipeline of which compensation has been claimed. Learned counsel submits that the Reference court has therefore, rightly treated the acquired lands as non irrigated lands.

7. Learned counsel appearing for the respondent acquiring body submits that the land under sale instance is small piece of land as compared to the acquired land, which is admeasuring 60 acres in total. Thus, the land admeasuring 30 R, which is subject matter of said sale instance cannot be the basis to award the compensation at the enhanced rate as per the consideration shown in the said sale

instance. Learned counsel submits that if the sale instance considered as a basis for grant of compensation at the enhanced rate, then the principle of deduction on the basis of smallness of land must be applied in the instant case. Learned counsel submits that considering smallness of the land under sale instance, 40% of deduction from consideration amount of said sale instance would be just and reasonable. Learned counsel submits that the Reference court has awarded exorbitant amount of compensation without considering the documentary evidence in its proper perspectives.

Learned counsel appearing for respondent acquiring body placed his reliance on the following judgments:-

i) K. Vasundara Devi vs. Revenue Divisional Officer (LAO), reported in AIR 1995 SC 2481

ii) Special Land Acquisition Officer and Anr vs. Sidappa Omanna Tumari and Ors. reported in 1995 (2) SCC 168.

8. I have also heard learned A.G.P. for the respondents State and L.A.O.

9. On careful perusal of pleadings, evidence led by the parties to substantiate their rival contentions and the impugned common judgment and award passed by the Reference court, it appears that

the Reference court has rightly considered the acquired lands as non irrigated lands. On the basis of documents, such as 7x12 extract Exh.24 to 26 and copy of award Exh.30 and “E” statement Exh.40, the learned Judge of Reference court has rightly come to the conclusion that in absence of any entries in the revenue record, the acquired lands cannot be treated as irrigated lands only on the basis of oral evidence led by the claimants. It further appears from the oral evidence of the claimants that a reference has been given only about irrigation of acquired lands on the basis of water of the well. The claimant, who has examined himself on oath before the Reference court, failed to substantiate, as to in which part of the acquired land the well is situated and through pipeline the water was being taken from the said well for the purpose of irrigation of acquired lands. In absence of any satisfactory evidence, the Reference Court has rightly held that the acquired lands are non irrigated lands.

10. So far as the sale instance dated 07.02.2000, as referred in both the common judgments is concerned, the same is in respect of land admeasuring 30 R sold for consideration of Rs.80,000/- prior to issuance of Section 4 notification in respect of the acquired lands. On careful perusal of pleadings of the respondents and even on perusal of impugned judgment and award, I do not find that the respondents acquired body or State raised the issue that small piece of land under

the sale instance cannot form basis for grant of compensation as per the consideration shown in the said sale instance. Obviously, the respondent acquiring body/State cannot be permitted to raise this point for the first time in the appeal before this court.

11. Furthermore, even though the acquired lands are 60 acres of land in total, if we consider the acquired land in individually, the same is ranging from 8 R to maximum 1 H 71 R. Thus, in the given set of facts, the land admeasuring 30 R cannot be treated as a small piece of land and the same is on the backdrop that the land under said sale instance, is also from the same village. The claimants have examined vendor of the sale instance viz. Popat Pawar in L.A.R. No. 643 of 2011 and other connected Reference petitions, who has deposed before the Reference court that the land under sale instance is at a distance of 500 meters from the acquired lands. The respondents acquiring body/State has not adduced any evidence before the Reference Court to rebut the said evidence of the claimants' witness on oath. The learned Judge of the Reference court therefore, has rightly taken into consideration the said sale instance as a basis for grant of compensation at enhanced rate. I do not find any perversity in the findings recorded by the Reference Court that consideration shown in the said sale instance reflects the market price of the land situated in the said vicinity.

12. In the case of ***K. Vasundara Devi vs. Revenue Divisional Officer (LAO) (supra)*** relied upon by the learned counsel for the respondent acquiring body, the court has considered the sale deed of the small extent of one Guntha each and therefore, the Supreme Court in the given set of facts held that the same will not form sale basis to determine market value of large track of lands under acquisition. In the instant case, the sale instance is of land admeasuring 30 R, which cannot be termed as small piece of land.

13. Learned counsel for the claimants has rightly pointed out that the sale instance dated 07.02.2000 pertains to Jirayat land and the same is also appearing in the title of the said sale instance. The Reference Court has erroneously observed by referring the said sale instance that it does not disclose whether it is irrigated land or non irrigated land. I have carefully perused the said sale instance, which is a part of record and in the title cause, it is specifically mentioned that the said sale instance is in respect of Jirayat land. The learned Judge of the Reference Court has not considered the same and treated the land under sale instance as irrigated land only on the basis of stray admissions given by one claimant Shriram in his cross examination that the land under sale instance is irrigated land.

14. It is nobody's case that the land under sale instance is irrigated land. Even the respondent has not come with a pleading to that effect or even nor assailed the evidence of the claimants on the ground that the land under sale instance is irrigated land. There is perversity in the findings recorded by the Reference court while treating the land under sale instance as irrigated land. Consequently, the Reference Court on the basis of said erroneous finding awarded the compensation by deducting 50% of the amount of consideration of the said sale instance. The Reference Court ought to have awarded the compensation at the enhanced rate in consonance with the rate, as reflected from the aforesaid sale instance, if at all relied upon the said sale instance.

15. After having gone through the sale instance dated 07.02.2000, I am satisfied that the said sale instance pertains to non irrigated land and it reflects the correct market value of the lands from the same village Pandhrewadi. Thus, the impugned judgment and award passed by the Reference court require modification. So far as the appeals preferred by the respondent acquiring body/State are concerned, I do not find any substance in those appeals. Thus, the appeals preferred by the respondent acquiring body/State are liable to be dismissed. Hence, I proceed to pass the following order:-

O R D E R

I. First appeal Nos. 2525 of 2016, 487 of 2014, 488 of 2014, 489 of 2014, 490 of 2014, 4467 of 2016, 4468 of 2016, 4469 of 2016, 4470 of 2016 and 4471 of 2016, filed by the claimants are hereby partly allowed with proportionate costs.

II. The claimants in all Reference petitions are entitled for compensation at the enhanced rate of Rs.1,06,666/- per acre in respect of their acquired lands situated at village Pandhrewadi, Tq. Paranda, District Osmanabad, with all statutory benefits, after deducing the compensation amount which is withdrawn by the claimants.

Iii. The modification, as aforesaid, be made in the impugned judgment and award passed by the learned Civil Judge, Senior Division, Paranda.

IV. Rest of the judgment and award stands confirmed.

V. The award be drawn up as per the above modification.

VI. The first appeal Nos. 1821 of 2015, 1822 of 2015, 1823 of 2015, 1824 of 2015, 411 of 2017, 412 of 2017, 413 of 2017, 414 of 2017, 415 of 2017 and 416 of 2017 filed by the acquiring body/State are hereby dismissed. No costs.

VII. All first appeals are disposed of.

(V. K. JADHAV, J.)

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