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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1873 OF 2017

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| 1. The Maharashtra Krushna Valley
Development Corporation,
Through Executive Engineer,
Medium Project No.2, Osmanabad
District – Osmanabad | APPELLANTS |
| 2. The State of Maharashtra
Through Collector, Osmanabad | |
| 3. The Land Acquisition Officer,
And Sub Divisional Officer, Bhoom | |

VERSUS

Popat Shankar Bhillare Age – 40 years, Occ – Agriculture R/o Pandharewadi, Taluka – Paranda District - Osmanabad	RESPONDENT
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WITH
FIRST APPEAL NO.1867 OF 2017

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| 1. The Maharashtra Krushna Valley
Development Corporation,
Through Executive Engineer,
Medium Project No.2, Osmanabad
District – Osmanabad | APPELLANTS |
| 2. The State of Maharashtra
Through Collector, Osmanabad | |
| 3. The Land Acquisition Officer,
And Sub Divisional Officer, Bhoom | |

VERSUS

Bankat Uttam Bhillare Age – 25 years, Occ – Agriculture R/o Pandharewadi, Taluka – Paranda	RESPONDENT
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District - Osmanabad

WITH
FIRST APPEAL NO.1868 OF 2017

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| 1. The Maharashtra Krushna Valley
Development Corporation,
Through Executive Engineer,
Medium Project No.2, Osmanabad
District – Osmanabad | APPELLANTS |
| 2. The State of Maharashtra
Through Collector, Osmanabad | |
| 3. The Land Acquisition Officer,
And Sub Divisional Officer, Bhoom | |

VERSUS

Janardhan Shripati Bhillare Age – 70 years, Occ – Agriculture R/o Pandharewadi, Taluka – Paranda District - Osmanabad	RESPONDENT
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WITH
FIRST APPEAL NO.1869 OF 2017

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| 1. The Maharashtra Krushna Valley
Development Corporation,
Through Executive Engineer,
Medium Project No.2, Osmanabad
District – Osmanabad | APPELLANTS |
| 2. The State of Maharashtra
Through Collector, Osmanabad | |
| 3. The Land Acquisition Officer,
And Sub Divisional Officer, Bhoom | |

VERSUS

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| 1. Machindra Bansi Bhillare
Age – 50 years, Occ – Agriculture | RESPONDENTS |
| 2. Bibhishan Bansi Bhillare, | |

Age – 48 years, Occ – Agriculture

3. Barku Bansi Bhillare,
Age – 46 years, Occ – Agriculture
4. Gogabai Bansi Bhillare
Age – 70 years, Occ – Agriculture
5. Dayabai Hari Jadhav
Age – 45 years, Occ – Agriculture

All R/o Pandharewadi, Taluka – Paranda
District - Osmanabad

WITH
FIRST APPEAL NO.1870 OF 2017

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| <ol style="list-style-type: none">1. The Maharashtra Krushna Valley
Development Corporation,
Through Executive Engineer,
Medium Project No.2, Osmanabad
District – Osmanabad2. The State of Maharashtra
Through Collector, Osmanabad3. The Land Acquisition Officer,
And Sub Divisional Officer, Bhoom | APPELLANTS |
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VERSUS

Saheb Atmaram Bhillare (Died) Through LRs	RESPONDENTS
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- A. Kalinda Neharu Bhillare
Age – 36 years, Occ – Agriculture
- B. Pandurang Neharu Bhillare
Age – 19 years, Occ – Agriculture

All R/o Pandharewadi, Taluka – Paranda
District - Osmanabad

WITH
FIRST APPEAL NO.1871 OF 2017

1. The Maharashtra Krushna Valley Development Corporation,
Through Executive Engineer,
Medium Project No.2, Osmanabad
District – Osmanabad
2. The State of Maharashtra
Through Collector, Osmanabad
3. The Land Acquisition Officer,
And Sub Divisional Officer, Bhoom

APPELLANTS

VERSUS

Abhiman Vithoba Bhillare
Age – 52 years, Occ – Agriculture
R/o Pandharewadi, Taluka – Paranda
District - Osmanabad

RESPONDENT

WITH
FIRST APPEAL NO.1872 OF 2017

1. The Maharashtra Krushna Valley Development Corporation,
Through Executive Engineer,
Medium Project No.2, Osmanabad
District – Osmanabad
2. The State of Maharashtra
Through Collector, Osmanabad
3. The Land Acquisition Officer,
And Sub Divisional Officer, Bhoom

APPELLANTS

VERSUS

Shankar Sayaji Bhillare
Age – 70 years, Occ – Agriculture
R/o Pandharewadi, Taluka – Paranda
District - Osmanabad

RESPONDENT

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Mr. Anil M. Gaikwad, Advocate for the appellants
Mr. Anant R. Devkate, Advocate for respondent – claimants
Mr. A.M. Phule, AGP for respondent - State

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 10th APRIL, 2018

ORAL JUDGMENT :

1. This group of first appeals is preferred by the appellants - acquiring body and the State against a common judgment and award dated 9th September, 2014 passed by Civil Judge, Senior Division, Paranda in Land Acquisition Reference No. 684 of 2011 and other companion land acquisition references. As such, all the first appeals are being heard and considered together by consent of the parties.

2. The lands concerned in present group of first appeals are acquired for rehabilitation of village Pandharewadi western side in Paranda Taluka. Notification under section 4 of the Land Acquisition Act, 1894 (herein after will be referred to as "L.A. Act") had been published on 14th June, 2001 and award in respect of the same had been passed by the Special Land Acquisition Officer on 13th October, 2003. According to the claimants, the compensation granted by the special land acquisition officer had been inadequate and had preferred

references pursuant to section 18 of the L.A. Act.

3. Land owners claimed that the acquired lands were fertile and irrigated lands with well water facility and used to give yield thrice in a year. Market price of the lands around the time of acquisition had been about Rs.1,00,000/- per acre which had been disregarded by the special land acquisition officer. All these aspects had not received their due at the end of the special land acquisition officer and inadequate compensation had been granted.

4. It may be noted that the acquisition of the lands of the claimants had been in the range of 16 *are* to 81 *are* and the lands were situated reasonably close to developed areas.

5. The appellants - acquiring body and the State resisted the references denying that the lands were irrigated, black cotton soil and fertile lands. Market rate of the acquired lands to be Rs.1,00,000/- around the time of notification under section 4 of the L. A. Act per acre had also been denied. The claims of the claimants had been termed to be exorbitant and had supported determination of compensation by the special land acquisition officer.

6. Before reference court common evidence had been led by the claimants in present group of first appeals.

Evidence of claimant from Land Acquisition Reference No. 684 of 2011 - Popat Shankar Bhillare had been considered and the reference court found that although he had claimed the lands to be irrigated ones, corresponding revenue record in the shape of seven twelve extracts of certain lands does not support the deposition by the claimant. There is no entry of well or share in the well and / or for that matter in other rights column also. Evidence is not supported by any electricity bill or for that matter existence of electric motor had been brought forth. Certified copy of award at Exhibit-18 and the E-statement at Exhibit-19 in reference did not give any indication of lands being irrigated. The reference court, as such, had declined to consider the lands to be irrigated ones.

So far as market price of the lands is concerned, the claimants had relied on certified copies of sale deeds filed at Exhibit-20 and Exhibit-21 dated 7th February, 2000 and 15th March, 1999 respectively. All the sale deeds pertain to lands from village Pandharewadi. While Exhibit-20 is in respect of non irrigated land, Exhibit-21 is in respect of seasonally irrigated

land. Although the reference court considered that claimants had not examined any witness to prove contents of said sale deeds, however, having regard to section 51A of the L.A. Act, since certified copy of a registered deed is acceptable as evidence of a transaction recorded in the document, the same were admitted and read in evidence. The reference court further, however, declined to go by sale instance at Exhibit-21, for, the same being of seasonally irrigated land and for certain other aspects. The reference court accepted the rate of land as appearing under sale deed at Exhibit-20. The lands being from the same village Pandharewadi. Thus had arrived at the rate for acquired lands @ Rs.1,06,666/- per acre. However, since claimants had claimed compensation @ Rs.1,00,000/- per acre, the court had considered it proper to grant rate as demanded by the claimants and accordingly had passed the award granting compensation @ Rs.1,00,000/- per acre.

7. Learned advocate for the appellants submits that the claimants have not been able to place on record anything to show that the lands acquired were irrigated lands or for that matter they were taking crop thrice in a year. Revenue record in respect of acquired lands did not support such claims. He submits that in such a scenario, while lands are considered to be

dry lands, the rate at which compensation has been purportedly granted under the impugned award based on sale instance of a smaller area would not be proper. It is submitted that rate granted by the reference court turns out to be excessive and the same will have to be brought down to a reasonable level of market price that would have been fetched on the date of notification for acquisition. Learned advocate for the appellants, therefore, seeks indulgence of this court to allow the first appeals and to alter and reduce the rate at which compensation had been granted under the award of the reference court.

8. Learned advocate for the respondent - claimants Mr. Devkate, submits that going by the prevailing market rate on the date of notification under section 4 of the L. A. Act for acquisition of lands, market rate had been higher than the one claimed by them. He submits, market rate adjudged on evidence by the reference court is higher and is Rs.1,06,666/- per acre. Albeit, the claimants had limited their demand to Rs.1,00,000/- per acre, yet according to him, it may not deprive the claimants of the compensation legitimately due to them, if found on evidence, higher than demanded. He submits that having regard to aforesaid, the demand being tuned down would not debar claimants forever from seeking their legitimate entitlement

based on evidence. In support of his such submission, he purports to refer to and rely on a decision of the Supreme Court in the case of "*Bhimasha V/s Special Land Acquisition Officer and Another*" reported in (2008) 10 SCC 797. He further fairly submits that in case compensation at the legitimately due rate is given to the claimants, they would make up deficiencies in payment of court fees before withdrawal of the amount. He, therefore, urges to consider the request pursuant to the entitlement of the claimants and grant compensation to the claimants @ Rs.1,06,666/- per acre for their acquired lands keeping in view the decision of the Supreme Court and the principles of justice, equity and good conscious. He submits that his such submissions also are in tune with Order XLI, Rule 33 of the Civil Procedure Code.

9. He further goes on to submit that as a matter of fact, while it has come on record that the lands were giving yield thrice a year it follows that the lands were irrigated lands, may be that revenue record on paper does not support the same, yet with reference to the evidence in respect of the lands situated in *mofussil* area and the land owners from the same area, the claim of the land owners to consider their lands to be irrigated lands would have been considered by the reference court. He further submits that while Exhibit-21 had been on record, it has been

disregarded for the inappreciable reasons. Land concerned under Exhibit-21 is from the same village Pandharewadi and sale is of the date prior to the date of notification. He submits that the sale instance at Exhibit-21 is from the same tract of lands as that of the acquired lands. In such a scenario, it would have been worthwhile to take into account said sale instance and ought not to have termed it as sale instance in respect of seasonally irrigated land. Albeit sale instance at Exhibit-20 has been considered and considering it to be in respect of dry land, compensation has been granted accordingly. He submits that there is no contrary evidence that could be produced on behalf of the appellants and the State about prevailing market rates at the time of notification of acquisition. In the absence of any other evidence, challenge being posed to the rate of compensation granted based on said sale instance shall fail and is bound to fail. He, therefore, submits that the first appeals be accordingly dismissed.

10. While learned advocates have been submitting so, they fairly refer to a decision of this court in a group of first appeals bearing No. 2525 of 2016 and companion first appeals, at the instance of the claimants who had not received compensation due to them and as such, had been before the court claiming

enhancement in the compensation including the ones filed by the present appellants bearing first appeals No. 1821 of 2015 and 1822 of 2015 wherein the rate of compensation granted by the reference court in those matters had been purportedly subjected to challenge. Learned advocates also concede to the position that lands concerned in that group of appeals are from the same village Pandharewadi, acquired under the same notification for the same project as in present matters and are from a similar tract. Quality, fertility and yielding capacity of the lands in those matters is similar and quite close to the lands in question in the present first appeals.

11. Taking into account aforesaid, it may be worthwhile to refer to decision in aforesaid matters *viz.*, first appeal No. 2525 of 2016 and companion matters including first appeal No. 1821 of 2015 and 1822 of 2015 a common judgment by this court passed on 21st February, 2017. Perusal of the same shows that it had been considered, after hearing respective advocates in those matters, submissions were made more or less to similar effect as those by learned advocates for the parties in this group of matters. The court had then found that so far as lands are concerned those can be considered as dry / *jirayat* lands and would have to be given compensation accordingly. It had been

considered that compensation will have to be adjudged having regard to the evidence on record. In those matters as well, sale instance dated 7th February, 2000 at Exhibit-20 before the reference court in the present group of first appeals had referred to and relied on. The court has also referred to that it had been nobody's case that land under sale instance had been an irrigated land. It was found that even deduction of 50% amount from consideration from said sale instance had been erroneous and the rate had been accordingly modified in tune with the rate appearing under the sale instance. With reference to the same, compensation had been determined @ Rs.1,06,666/- per acre for the acquired lands. The court had also dealt with the submission on behalf of the acquiring body about sale instance being of smaller area. The court also found that acquisition of lands ranges between 8 *Are* and 1 Hectare 71 *Are*. Similar is the case in the present group of first appeals, wherein acquisition of lands has been ranging from 16 *Are* to 81 *Are*.

12. The claimants in that case, had examined vendor of the sale and had found that no evidence had been adduced in rebuttal by the acquiring body or the State. The court had further referred to a decision in the case of "*K. Vasundara Devi V/s Revenue Divisional Officer (LAO)*" reported in *AIR 1995 SC 2481* relied

upon on behalf of the acquiring body and had distinguished the same as decision rendered by the Supreme Court had been in very peculiar facts of the case.

13. In the present matters, it emerges that, the considerations which weighed with the high court while deciding group of first appeals bearing No. 2525 of 2016 and companion matters and first appeals No.1821 of 2015 and 1822 of 2015 by the State, apply on all fours to the present matters.

14. In the circumstances, it appears to be expedient to dismiss first appeals by the appellants. However, rate of compensation which has been granted by the reference court may have to be modified and increased to Rs.1,06,666/- per acre taking into account Order XLI, Rule 33 of the Civil Procedure Code and the decision of the Supreme Court relied on by the claimants in the case of "*Bhimasha*" (*Supra*).

15. As such, first appeals are dismissed. Rate of compensation granted by the land acquisition reference court under its award is modified to Rs.1,06,666/- per acre. Benefits to the claimants shall accordingly accrue. Appellants may deposit the difference of amount of compensation as granted by this court, either in this court or in the executing court for payment to the claimants.

The amount already deposited in this court may be allowed to be withdrawn by the claimants. On deposit of proper court fee, the claimants may withdraw the modified amount.

16. In view of disposal of first appeals, pending civil applications do not survive and accordingly disposed of.

[SUNIL P. DESHMUKH, J.]