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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1880 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,
(M.I.W.), Bhoom, Osmanabad | |

VERSUS

Vilas Laxman Khatake Age – 45 years, Occ – Agriculture R/o Pandharewadi, Taluka – Paranda District - Osmanabad	RESPONDENT
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WITH
FIRST APPEAL NO.1881 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,
(M.I.W.), Bhoom, Osmanabad | |

VERSUS

Mahadeo Bapu Khatake Age – 55 years, Occ – Agriculture R/o Pandharewadi, Taluka – Paranda	RESPONDENT
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District - Osmanabad

WITH
FIRST APPEAL NO.1882 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,
(M. I. W.), Bhoom, Osmanabad | |

VERSUS

Bhagwan Bapu Khatake Age – 55 years, Occ – Agriculture R/o Pandharewadi, Taluka – Paranda District - Osmanabad	RESPONDENT
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WITH
FIRST APPEAL NO.1883 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,
(M. I. W.), Bhoom, Osmanabad | |

VERSUS

- | | |
|---|-------------|
| 1. Balu Laxman Khatake
Age – 45 years, Occ – Agriculture | RESPONDENTS |
| 2. Rajendra Laxman Khatake, | |

Age – 47 years, Occ – Agriculture

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

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Mr. Anil M. Gaikwad, Advocate for the appellants

Mr. Abhijit S. More, Advocate for respondent – claimants

Mr. B. V. Virdhe, 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 5th February, 2015 passed by Civil Judge, Senior Division, Paranda in Land Acquisition Reference No. 694 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 the purpose of Lower Khiri Medium Project for proposed *Gavthan* of Pandharewadi (East) Taluka-Paranda. 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 15th December, 2004. 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.2,00,000/- 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 16 *Are*, 19 *Are*, 19 *Are* and 13 *Are* respectively 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.2,00,000/- 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. 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 claim of the claimants. 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.

7. Learned advocate for the respondent - claimants Mr. More,

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, rate had been higher than the one claimed by them. He submits, rate has been adjudged on evidence by the reference court.

8. 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. As such, the reference court has properly considered that the lands of the claimants to be irrigated lands. Land concerned under Exhibit-24 is from the same village Pandharewadi and is of the date prior to the date of notification. He submits that the sale instance at Exhibit-24 is from the same village of non irrigated land. The same has been properly taken into account. 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 and while sale instance at Exhibit-24 has been considered. Compensation in respect of acquired land, considering those to be irrigated lands, has been granted double the rate of non irrigated lands accordingly. 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.

9. Before reference court common evidence had been led by the claimants in present group of first appeals. Certified copies of sale instance dated 7th February, 2000 concerning 30 *are* land from the same village Pandharewadi which had been sold for a consideration of Rs.80,000/- at Exhibit-24 had been relied on for market price. 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 accepted the rate of land as appearing under sale deed at Exhibit-24. Evidence of claimant from Land Acquisition Reference No. 694 of 2011– Vilas Laxman Khatake had been considered. Since the present lands are considered as irrigated lands, the reference court had considered that double compensation than dry land is required to be granted and thus had arrived at the rate for acquired lands @ Rs.2,00,000/- per acre and accordingly had passed the award granting compensation @ Rs.2,00,000/- per acre.

10. It appears, the claimant had led evidence, which has been appreciated by the reference court. In the present group of appeals, the claimants had led evidence through one Vilas Laxman Khatke at Exhibit-30. He has referred to that the lands were irrigated by well water and Sina river. They were raising double or triple crops like Chilly, groundnut, wheat, sugarcane, cotton, sunflower etc., in a year and were getting annual net income of Rs.1,00,000/- exclusive of costs. He further refers to quite a few developments at Pandharewadi. The reference court has referred to this aspect in its judgment. The reference court has referred to that seven twelve extract at Exhibits-25, 26 and 28 reveal that there is entry of well, as also E-statement shows entry of pipeline. The reference court has found land surveys No. 44 and 55 to be adjacent lands. The reference court found that the claim made by the claimants about lands being irrigated is supported by corresponding revenue record.

11. Thus, the reference court has appreciated that the lands of the claimants in Land Acquisition References No. 694 of 2022, 632 of 2011, 633 of 2011 and 649 of 2011 to be irrigated lands.

12. Reliance has been placed on certified copy of sale deed at

Exhibit-24 dated 7th February, 2000 for market price.

Cross-examination of the witness has not been able to shatter evidence of the witness. On evidence, as appreciated by reference court, it appears that all proper aspects have been considered *viz.*, while determining land value. Sale instance in respect of available dry lands from the same village has been considered. It appears to have emerged on record that the lands under acquisition were irrigated lands. The reference court, as such has doubled the rate of compensation referring to that, it is in tune with prevailing position of law. Evidence led by the claimants had not been impeached and much less disproved by producing any credible material.

13. It emerges that the decision rendered by the reference court is with reference to the evidence as adduced and as appreciated, which does not appear to be arbitrary or capricious and much less perverse. Eventually, as referred to above, in the absence of any contrary evidence, it is difficult to unsettle the decision rendered by the reference court.

14. As such, first appeals are dismissed. The amount already deposited in this court may be allowed to be withdrawn by the claimants.

15. Pending civil applications do not survive and accordingly disposed of.

[SUNIL P. DESHMUKH, J.]

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