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

FIRST APPEAL NO.1532 OF 2018

1. Eknath S/o Ramrao Marade,
Since deceased through his
legal representatives.

1A. Asrabai Wd/o Eknath Marade,
Age: 67 Years, Occ: Agriculture,
R/o: Poundul, Tal. Shirur (K),
Dist. Beed.

1B. Bandu S/o Eknath Marade,
Age: 36 Years, Occ: Agril.
r/o as above.

...Appellants

Versus

The State of Maharashtra
Through Collector, Beed.

...Respondent

WITH

FIRST APPEAL NO.1533 OF 2018

1. Keshav S/o Ramrao Marade,
Since deceased through his
legal representatives.

1A. Parubai Wd/o Keshav Marade,
Age: 80 Years, Occ: Agriculture,
R/o: Poundul, Tal. Shirur (K),
Dist. Beed.

1B. Kisan S/o Keshav Marade,
Age: 55 Years, Occ: Agril.
r/o as above.

1C. Baliram S/o Keshav Marade,
Age: 40 Years, Occ: Agril.,
r/o as above.

...Appellants

Versus

The State of Maharashtra
Through Collector, Beed.

...Respondent

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...

Mr. Mr. Rajendra G. Hange, Advocate for Appellants.
Mr. A.M. Phule & Mr. S.J. Salgare, AGP for
Respondent/State.

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CORAM : P.R. BORA, J.

DATED : 25th FEBRUARY, 2019.

ORAL JUDGMENT:-

. Since both these appeals are arising out of the common judgment and award passed by the II Ad-hoc District Judge, Beed in L.A.R. No.127 of 1994 with connected land acquisition references on 07.04.2005, I heard the common arguments in both these appeals and I deem it appropriate to decide these appeals by common reasoning.

2. The appellants, who are hereinafter referred to as the 'claimants' had filed the land acquisition references bearing L.A.R. No.149 of 1994 and L.A.R. No.150 of 1994 under Section 18 of the Land Acquisition Act in order to get enhanced the amount of compensation offered to them by the SLAO towards acquisition of their lands for the Narayan Gad Medium Project at village Poundul. The land owned by the claimants were acquired for the aforesaid project vide notification under Section 4 of the Land Acquisition Act published in the

official gazette on 10.10.1988 and the award under Section 11 came to be passed on 12.07.1991. The SLAO had offered the compensation to the claimants towards acquisition of their lands at the rate of Rs.250/- per R. The SLAO had treated the acquired lands to be non-irrigated lands. Dissatisfied with the amount of compensation so offered, the claimants filed the reference applications as noted here-in-above. The Reference Court enhanced the amount of compensation by determining the market value of the non-irrigated lands at the rate of Rs.500/- per R and the semi irrigated lands at the rate of Rs.750/- per R. The Reference Court treated the lands which are involved in the present appeals to be non-irrigated lands and accordingly awarded the enhanced compensation at the rate of Rs.500/- per R.

3. In the present appeals a very short submission which has been advanced by Shri Hange, the learned counsel appearing for the claimant is that the Reference Court wrongly held the lands of the present claimants to be non-irrigated lands though, sufficient evidence was placed on record by the claimants evidencing that the lands were

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falling in the category of semi irrigated lands. The learned counsel invited my attention to the 7/12 extracts pertaining to the acquired lands and the crop statements in order to support his contention that the lands were falling in the category of semi irrigated lands. The learned counsel further submitted that arising out of the same common judgment and award delivered in L.A.R. No.127 of 1994 with connected land acquisition references, this Court has decided some of the first appeals bearing First Appeal No.3398 of 2008 with connected appeals wherein the same issue was raised and this Court after having gone through the evidence in the said matters had held the acquired lands involved in the said matters to be semi irrigated lands and has accordingly awarded the rate of semi irrigated lands. The learned counsel submitted that the lands which are involved in the present appeals stand at par with the lands in the said matter and has therefore prayed for allowing the appeals on similar lines.

4. The learned AGP Shri Phule and Shri Salgare appearing in the respective matters have opposed the submissions made on behalf of the

appellants-claimants. The learned AGP's submitted that since there was no concrete evidence brought on record by the appellants-claimants as about the potentiality of the acquired lands, the Trial Court has rightly held the said lands to be dry lands. The learned AGP's in the circumstances prayed for dismissal of the appeals.

5. I have given due consideration to the submissions made by Shri Hange, the learned counsel appearing for the appellants-claimants and the learned AGP's appearing for the respondents. I have perused the impugned judgment as well as record of the case. More particularly, I have perused the 7/12 extracts pertaining to the acquired lands of few years proceeding of the acquisitions. The crop statements clearly reveal that two crops were being taken by the appellants-claimants and the acquired lands were being irrigated on the well water. Having regard to the evidence which has been brought on record, I have no hesitation in holding that the lands involved in these appeals were liable to be held as semi irrigated lands. The Reference Court has failed in

properly appreciating the evidence on record. Both appellants in the present appeals have testified before the Court and have in specific terms deposed that the lands acquired were semi irrigated lands and were being irrigated on the well water for which their share has been distinctly shown on the 7/12 extract also. In the circumstances, I am inclined to allow the present appeals to the aforesaid extent.

6. This Court in First Appeal No. 3398 of 2008 and in appeals arising out of the common judgment and award has held the lands involved in the said matters to be semi irrigated and has accordingly enhanced the amount of compensation. The same treatment needs to be given to the present claimants. In the result, the following order is passed:

ORDER

i) The lands which are subject matter of the present appeals are held to be semi irrigated lands. Consequently, the compensation payable to the present appellants stands enhanced at the rate of Rs.750/- per R excluding the amount of compensation already received to the claimants with

all statutory benefits.

ii) The claimants are also entitled to receive the interest under Section 28 and 34 of the Act on the enhanced amount of compensation from the date of passing of the award i.e. 12.07.1991.

iii) Both these appeals stand partly allowed in the aforesaid terms.

iv) It is clarified that while preparing modified awards and calculating interest, the claimants shall not be held entitled for the interest of the period of delay of 3865 days since, while condoning the delay the order has been passed in that regard.

(P.R. BORA, J.)

Mujaheed//