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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

FIRST APPEAL NO.378 OF 2017

1. Namdeo Ganpat Shelke (dead),
Aged major, occupation agriculturist.

1-A] Suman Sitaram Hule,
Aged about 61 years, occupation : household.
R/o : at/post – Ghobhani,
Tahsil-Risod, district Washim.

1-B] Latabai Nivruti Kaldate,
Aged about 48 years, occupation : household.
R/o : at/post Bhar Jahagir,
Tahsil-Risod, district Washim.

1-C] Gajanan Namdeo Shelke,
Aged about 46 years, occupation : agriculturist,
R/o : at/post – Madani,
Tahsil-Mehkar, district Buldhana. **Appellants.**

2. Parakash Namdeo Shelke,
Aged-major, occupation agriculturist,

Both r/o Madni, taluka Mehkar,
District Buldhana.

:: V E R S U S ::

1. State of Maharashtra,
Represented by Collector, Buldhana.

2. The Special Land Acquisition
Officer, Minor Irrigation Project,
Buldhana.

3. Executive Engineer,
Minor Irrigation Division, Akola,
Taluka and district Akola. **Respondents.**

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Shri S.U.Bhuyar, Counsel for Appellants.
Ms Nishu Burange, Advocate h/f Mrs.I.P.Khisti, Counsel for
Respondent No.3.
Mrs.Shamsi Haider, Assistant Government Pleader for
Respondent Nos.1 and 2.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 08/02/2023
PRONOUNCED ON : 10/04/2023

JUDGMENT

1. By this appeal, the appellants (claimants) challenge judgment and order dated 13.2.2013 passed by learned Joint Civil Judge Senior Division, Buldhana in LAC No.94/2005 for enhancement of compensation.

2. Facts in brief are as under:

Appellant/claimant Namdeo Ganpat Shelke was the owner of lands gat Nos.198, 204, and 266 admeasuring 3H 44R, 1H 20R, and 1H 56R respectively situated at village Madni, taluka Mehkar, district Buldana. The said lands were acquired by respondent No.3 for the purpose of submergence of Netansa Project at village Madni. Notification under Section 4 was issued on 2.9.1999. The award was passed by the respondent No.2 on 6.12.2002 whereby compensation at the rate of Rs.46,800/- per hectare was awarded for dry crop

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land. The said claimant received the compensation at the rate of Rs.46,800/- per hectare for the acquired lands under protest.

3. As per the contention of the claimant, the acquired lands were having good fertility and potentiality having fruit bearing trees. The village Madni is a developed village having facilities like schools, post offices, and bus stands etc.. The lands were irrigated by well. All these factors are not considered by the Land Acquisition Officer and awarded the inadequate compensation.

4. Being aggrieved with the same, appellant/claimant Namdeo Shelke preferred the reference and claimed the enhanced compensation amount. The contentions of the claimant was denied by the respondents by filing a written statement on record. As per the contentions of the respondents, the Land Acquisition Officer had considered the quality, production, and revenue assessment of the said land and sale instances and awarded the compensation and, therefore, no interference is called for. To substantiate the contentions, the claimant ought to have adduced the evidence. After sufficient opportunity, the claimant has not

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adduced any evidence and, therefore, the reference court considered the award and previous judgment in respect of the land reference, wherein the lands were acquired by the same notification bearing LAC No.1/2006, and on the ground of parity, awarded the compensation at the rate of Rs.73,332/- along with statutory benefits.

5. Being aggrieved and dissatisfied with the judgment and award passed by the reference court, the present appeal is preferred for enhancement of compensation on the ground that the reference court failed to consider the quality, potentiality, and non-agricultural potentiality use of the lands and awarded the compensation at the meager rate and, therefore, the judgment and award passed by the reference court deserves to be modified by enhancing the compensation.

6. Heard learned counsel Shri S.U.Bhuyar for the appellants/claimants, Advocate Ms Nishu Burange h/f learned counsel Mrs.I.P.Khisti for Respondent No.3/Executive Engineer, Minor Irrigation Division, Akola, and learned Assistant Government Pleader Mrs.Shamsi Haider for respondent Nos.1 and 2/State.

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7. Learned counsel Shri S.U.Bhuyar for the claimants submitted that the reference court has not considered the market value of the acquired lands. The lands were having source of well water. Thus, lands were seasonal irrigated lands. The reference court has also not considered the market value of the lands at the relevant time and its potentiality as a non-agricultural lands. The amount of compensation awarded by the reference court is adequate and the same is liable to be enhanced.

8. In support of his contentions, learned counsel Shri S.U.Bhuyar for the claimants placed reliance on the decision of the Honourable Apex Court in the case of Chindha Fakira Patil (dead) through legal heirs vs. Special Land Acquisition Officer, Jalgaon, reported in 2012(2) Mh.L.J. 530 wherein it has been held that the High Court was not right in interfering with the fixation of the market value by the reference court. The Honourable Apex Court referred its judgment in the case of M.Vijayalakshamma Rao Bahadur vs. Collector of Madras, reported in (1969) 1 MLJ 45 (SC) wherein it is held as under:

“After all when land is being compulsorily taken away from a person he is entitled to say that he should be given the highest value which similar

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land in the locality is shown to have fetched in a *bona fide* transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. It is not disputed that the transaction represented by Ex. Rule 19 was a few months prior to the notification under Section 4, that it was a *bona fide* transaction and that it was entered into between a willing purchaser and a willing seller. The land comprised in the sale deed is 11 grounds and was sold at Rs.1951/- per ground. The land covered by Rule 27 was also sold before the notification but after the land comprised in Ex. Rule 19 was sold. It is true that this land was sold at Rs.1096/- per ground. This, however, is apparently because of two circumstances. One is that betterment levy at Rs.500/- per ground had to be paid by the vendee and the other that the land comprised in it is very much more extensive, that is about 93 grounds or so. Whatever that may be, it seems to us to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case."

Thus, he submitted that in view of the judgment cited *supra*, the market value, which is the highest, is to be accepted and the compensation is to be awarded.

9. *Per contra*, learned counsel for respondent No.3 submitted that in fact the claimant has not adduced any

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evidence. However, the reference court has awarded the compensation on the basis of the evidence available before it by placing reliance on its earlier Judgment which is just and proper one.

10. In support of her contentions, learned counsel for respondent No.3 placed reliance on the decision of this Court (bench at Aurangabad) in the case of Bayaji Tatya Kalunge vs. State of Maharashtra, reported in 2007(2) ALL MR 316 wherein it is held that when the land situated in the same village is acquired for the same purpose under the same Notification, the claimants are entitled for compensation at the same rate on the ground of parity.

She further placed reliance on the decision of the Honourable Apex Court in the case of B.A.Naik, since deceased by his legal representatives vs. Special Land Acquisition Officer, UKP, Bilagi, Karnataka and others, reported in (2019)20 SCC 631 wherein also it has been held that the claimants are entitled on the grounds of being similarly situated to land owners who had been awarded a higher level of compensation in terms of Judgment of Court.

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She further placed reliance on the decision of this Court (bench at Aurangabad) in the case of Harish Ratanlal Bhansali vs. State of Maharashtra and another, reported in 2018(5) Mh.L.J. 182 wherein also the same ratio is laid down.

11. After hearing both the sides, the first and the foremost question arises is as under:

Whether the claimants have made out the case for grant of compensation at the enhanced rate?

12. There is no dispute that the lands of the claimants bearing lands gat Nos.198, 204, and 266 were acquired by the Government Notification issued in the Government Gazette and by passing award on 6.12.2002 for Netansa Project. In support of the contentions, the claimants filed on record award bearing No.57/1998-99 which shows that the lands are situated in the village Madni, taluka Mehkar which is at a distance of 20 kilometers from Mehkar. The Land Acquisition Officer has awarded the compensation on the basis of its revenue assessment and the sale deeds. He had divided the acquired lands into various groups as per their revenue assessment and awarded the compensation which is challenged before the reference court. When the claimants

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claim the compensation at the enhanced rate, burden is on the claimants to prove that they are entitled to receive compensation at the enhanced rate. Admittedly, the claimant has not entered into the witness box in support of his contentions. To prove that the acquired lands were having source of water through the well water is also not proved by producing 7/12 extract on record. It is well settled that the awards in land acquisition cases are essentially a decision on a question of fact depending on the facts and circumstances of each case. The said circumstances and facts are to be proved by the claimants by adducing the reliable evidence which is absent in the present case. As no evidence is adduced, the reference court, by taking assistance of the earlier Judgment passed in LAC No.1/2006, awarded the compensation. In the decision of the Honourable Apex Court in the case of Chindha Fakira Patil (dead) through legal heirs vs. Special Land Acquisition Officer, Jalgaon cited *supra*, relied by learned counsel for the appellants/claimants, also it is observed that the market value is to be taken into consideration on the basis of sale deeds produced before the court.

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13. Here, in the present case, neither an oral evidence nor a documentary evidence is produced by the claimant. The claimant raised the grievance about the quantum of compensation, however has not adduced any evidence to prove the same. As observed by this Court in various judgments, that the earlier judgments can be taken into consideration, when the lands situated in the same village are acquired for the same purpose under the same Notification, the claimants are entitled to compensation at the same rate.

14. In the case of Kawadu Mahadu Banson vs. State of Maharashtra, reported in 2004(1) Mh.L.J. 980 wherein this Court held that the adjudication made by the Civil Court on the reference has to be regarded as an award, whether an enhanced compensation is given or not. But in that event the Court should consider the material on record, even if the party is absent and has failed to adduce evidence. In view of that, the reference court has awarded the compensation.

15. In such circumstances, the reference court was not wrong in relying upon the earlier award passed by the reference court in LAC No.1/2006. Thus, the claimants have

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not made out any ground to interfere in the judgment and award passed by the reference court.

16. In this view of the matter, as this Court finds the appeal is devoid of merits and liable to be dismissed, the appeal is **dismissed** and I answer the point accordingly. However, there shall be order as to costs.

(URMILA JOSHI-PHALKE, J.)

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