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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2607 OF 2020

Syed Muniruddin Syed Bashiroddin
Age – 54 years, Occ – Service
R/o Shobha Nagar, Nanded
Taluka and District – Nanded

PETITIONER

VERSUS

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| 1. The State of Maharashtra
Through District Collector, Nanded | RESPONDENTS |
| 2. The Special Land Acquisition Officer,
PT/MIW – 2, Nanded | |
| 3. Nanded Waghala City Municipal Corporation
Nanded, Through its Commissioner
Office at Stadium, Nanded | |

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Mr. Hamzakhan I. Pathan, Advocate for the petitioner
Mr. P. G. Borade, AGP for respondent - State
Mr. Mrigesh D. Narwadkar, Advocate for respondent No.3

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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 3rd DECEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.

2. This petition challenges judgment and order dated 28th November, 2019 passed by Second Joint Civil Judge, Senior Division, Nanded in LAR No. 567 of 2010, thereby dismissing the reference filed by the petitioner.

3. Learned advocate for the petitioner submitted that the reference is decided without giving an opportunity of hearing to the petitioner and his advocate. When the matter was taken up for hearing, neither the petitioner nor his advocate was present, which is recorded in the impugned judgment of the Reference Court.

4. The petitioner initiated LAR No. 567 of 2010 contending that total area of 30' X 80' (690 square feet) from plots No. 87 and 88, situated in survey No. 13 situated at Asadullabad, Near Shiv Nagar / Maheboob Nagar, Nanded was acquired by the respondents for the development scheme, Nanded (Revised) for "*Guru-ta-Gaddi*" programme of 2008. However, the respondents have shown only an area of 58.84 square meter to have been acquired and the petitioner was paid compensation only for the said area. The petitioner, therefore, claimed compensation for the remaining acquired area.

5. Learned advocate for the respondent No.3 strenuously opposes the prayer of the petitioner contending that it is observed by the Reference Court that the issues were framed on 9th March, 2012 and thereafter, it appears that the claimant and his advocate were absent. He further submits that because of

the lapses on the part of the petitioner and his advocate, the matter was heard on merits in their absence and is rightly dismissed by the Reference Court. Therefore, according to him, no interference is called for in the impugned judgment.

6. It is not in dispute that the Reference was initiated by the petitioner in the year 2010 and issues were framed on 9th March, 2012. After the Land Acquisition Reference was transferred from the Collector office to the Reference Court, both the parties though appeared in the Reference at that time, however, neither party remained present before the Reference Court, thereafter till 18th September, 2017. Therefore, evidence of the claimant was ordered to be closed by order passed below Exhibit-1. The matter was thereafter kept for determination of the claim, in the absence of the claimant and the respondents, by orders dated 26th July, 2018 and 17th August, 2018. In spite of that, the petitioner – claimant did not appear before the Reference Court. Hence, the Reference Court proceeded for determination of the claim. Learned advocate for the petitioner-claimant as well as learned AGP remained absent and failed to adduce any evidence so also failed to argue the Reference. Respondent No. 3 filed written statement on record resisting the claim of the petitioner.

7. It is also a matter of record that the Land Acquisition

Reference No. 567 of 2010 was transferred, from the Court of 3rd Joint Civil Judge, Senior Division Nanded to the Court of 2nd Joint Civil Judge, Senior Division Nanded. This fact is not disputed by the respondents.

8. The Reference Court, in absence of the parties, dismissed the Reference on the basis of the material available on record, by observing that though daily board was displayed on notice board and *Roznama* was being uploaded on Case Information System, however, neither the AGP nor the claimant or his advocate remained present.

9. Since the impugned judgment is passed without hearing the petitioner, the same cannot be sustained, though it is a fact that there are lapses on the part of the petitioner and his advocate in not diligently contesting the matter, however, in the interest of justice, it is desirable to give an opportunity of hearing to the petitioner and to permit him to lead evidence in support of his claim. Hence, the following order.

ORDER

- I. Writ petition is allowed.
- II. Impugned judgment and order dated 28th November, 2018 passed by 2nd Joint Civil Judge, Senior Division,

Nanded in LAR No. 567 of 2010 (Exhibit-23) is quashed and set aside.

- III. The matter is remanded back to the 2nd Civil Judge, Senior Division, Nanded for fresh consideration of the LAR No. 567 of 2010 on merits, after hearing the parties.
- IV. The petitioner and the respondents to appear before the Reference Court on 10th January, 2022.
- V. The Reference Court shall make an endeavour to decide the Reference within a period of six months from the date of first appearance of the parties.
- VI. It is made clear that the petitioner shall not be entitled to claim interest on enhanced compensation, if any, awarded to the petitioner for the period between 18th September, 2017 and 20th December, 2021.
- VII. Rule is made absolute in above terms, subject to the petitioner paying costs of Rs.10,000/- to respondent No.3.

[NITIN B. SURYAWANSHI]
JUDGE