

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

FIRST APPEAL NO.910 OF 2004

Baburao s/o Abanrao More,
Age : 48 years, Occu.: Agriculture,
R/o.: Wahegaon, Taluka and
District : Nanded **APPELLANT**

VERSUS

1. The State of Maharashtra,
Through : Collector, Nanded
2. The Spl. Land Acquisition Officer,
M.I.W., Nanded **RESPONDENTS**

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Advocate for Appellant : Mr. V. D. Patnoorkar
Advocate for Respondents-State : Mr. A. B. Chate

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CORAM : SANDIPKUMAR C. MORE, J.

**RESERVED ON : 30/01/2023
PRONOUNCED ON : 06/02/2023**

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JUDGMENT :

1. The appellant - claimant has challenged the judgment and award dated 31/12/2003, passed by the learned IVth Adhoc Additional District Judge, Nanded (hereinafter referred to as 'the learned reference court') in L.A.R. No.224 of 1995. Under the impugned judgment and award, the learned reference court has dismissed the L.A.R. of the appellant - claimant.
2. The learned counsel for the appellant-claimant submits that the learned reference court has dismissed the petition of the appellant-claimant for claiming enhanced compensation without

giving him any opportunity of leading evidence. He further submits that the acquiring body was not party to the aforesaid petition and therefore, dismissal of the reference petition in absence of acquiring body, was erroneous. With these submissions, he claimed that remand of this matter is necessary. He relied upon following judgments.

- A) Nandura Municipal Council, Nandura vs. Ramesh Pralhad Niwane and another, 2016(2) Mh.L.J. 676 and*
- B) Khushalrao Tulshiramji Pandao and others vs. State of Maharashtra and others, 2001(4) Mh.L.J. 510.*

3. On the contrary, the learned AGP strongly opposed the submissions and submits that though the award was passed in absence of evidence either by the appellant - claimant or by the respondents, but the judgment itself shows that sufficient opportunity was given to the appellant-claimant to lead evidence and since the appellant - claimant failed in doing so, the learned reference court decided the land reference on merits on the basis of available documents on record. He, thus, prayed for dismissal of this appeal.

4. Admittedly, on going through the impugned judgment, it appears that the learned reference court has decided the land reference only on the basis of documents on record and in the light of the petition and written statement. It is also evident that the respondents had also not led any evidence. Further, it appears that the learned reference court also came to the conclusion that the reference filed by the appellant - claimant was time barred.

However, it appears that such observation has come in the judgment without there being any document to support the same.

5. This court in the judgment reported in ***Nandura Municipal Council, Nandura*** (supra), has observed that award passed in absence of acquiring body, is not sustainable and therefore, it was necessary to remand matter by giving an opportunity to the acquiring body to adduce evidence. In the instant matter, the acquiring body was not made party. However, the learned counsel for the appellant - claimant assured this court that he would make the acquiring body as a party respondent, in case the matter is remanded back.

6. Though it is apparent from the observation of the learned reference court that the appellant - claimant despite sufficient opportunity failed to lead any evidence, but it is equally important to note that an opportunity of leading evidence is definitely denied to him. Moreover, there is also no evidence from the respondents. Further, the observation of the learned reference court that the claim is time barred, is also not supported by necessary documents. Under these circumstances, an opportunity of leading evidence needs to be given to both the contesting parties. Moreover, permission to add acquiring body as a party respondent is also required to be given to the appellant - claimant to decide the matter on merit in accordance with law.

7. However, the act of failure of the appellant-claimant in leading the evidence despite sufficient opportunity, must be punished while allowing him fresh opportunity. In view of the same, following order is passed.

ORDER

- I) The appeal is partly allowed.
- II) The judgment and award dated 31/12/2003 passed by the learned IVth Adhoc Additional District Judge, Nanded is set aside and the matter is remanded back to the concerned reference court for deciding it afresh by providing an opportunity to the rival parties to lead oral as well as documentary evidence.
- III) The appellant - claimant is also permitted to add the acquiring body as a party respondent.
- IV) The learned reference court is directed to decide L.A.R.No.224 of 1995 as expeditiously as possible and within a period of one year from the date of receipt of this order.
- V) In case, the reference court grants any compensation to the appellant - claimant, he shall not be entitled for interest from 31/12/1995 till fresh decision of L.A.R. No.224 of 1995.
- VI) The parties are directed to appear before the concerned reference court on 01/03/2023.
- VII) The record and proceedings be sent to the concerned reference court forthwith.
- VIII) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)