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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4585 OF 2020

Dastgir Bandgi Shaikh
Age - 50 years, Occ - Agriculture
R/o Chincholi (Rebe)
Taluka - Lohara, District - Osmanabad

PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary, Revenue & Forest
Department, Mantralaya, Mumbai
2. The Collector,
Collector Office, Osmanabad

RESPONDENTS

.....
Mr. M. L. Dharashive, Advocate for the Petitioner
Mrs. A. S. Mantri, AGP for Respondent - State
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[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 28th JANUARY, 2025

ORDER :

1. By way of this Writ Petition, the Petitioner has challenged order dated 22nd October, 2018 passed by 2nd Joint Civil Judge, Senior Division, Omerga, District - Osmanabad in LAR No. 780 of 2009 (Old LAR No. 476 of 2003), whereby Land Reference Application filed by the Petitioner has been rejected.

2. Learned Advocate for the Petitioner submits that the Petitioner has filed LAR No. 780 of 2009, which was pending before learned 2nd Joint Civil Judge, Senior Division, Omerga for final adjudication and evidence. During pendency of said

reference it was posted for evidence and learned Advocate for the Petitioner and he himself were absent for conducting the matter and to lead evidence. The Reference Court, therefore, has proceeded and decided the Reference Application vide judgment and order dated 22nd October, 2018. The Reference has been rejected by the Reference Court on the ground that the Petitioner has failed to lead evidence and he is negligent in conducting the matter.

3. Learned Advocate for the Petitioner submits that due to unavoidable circumstances the petitioner and his advocate could not remain present for conducting the matter before the Reference Court and therefore, it is prayed to remand the matter back to the Reference Court in order to afford an opportunity of hearing to the Petitioner.

4. Learned Advocate for the Petitioner relied on a judgment in the case of ***“Kawadu Madhav Bansod V/s State of Maharashtra” reported in 2004 (4) BCR 495***, in support of his contention that merely because the claimant has failed to adduce evidence , reference cannot be disposed of. It is the duty of the Reference Court to determine the compensation payable for the land acquired.

5. Learned AGP opposes the writ petition and submits that the

Reference Court has clearly recorded that in spite of granting sufficient opportunity, the claimant as well as his advocate had remained absent. Considering the long pendency of the matter the Reference Court is justified in disposing of the Reference.

6. Learned Advocate for the Petitioner has placed reliance on the order passed by this Court in group of Writ Petitions bearing No. 2698 of 2021 and connected matters dated 10th February, 2021 (Coram : V. K. Jadhav, J.). In the said group of Writ Petitions, this Court, in similar situation, has quashed and set aside the order passed by the Reference Court. In the said order, this Court has placed reliance on the judgment in the case of **“Khazan Singh V/s Union of India” 2002 (2) SCC 242**, wherein it has been held that the reference has to be decided by the Civil Court on the basis of material before it on merits and have to record findings on the merits of the matter. Reliance is also placed on various judgments and orders wherein similar view has been taken and orders disposing of reference on the ground of failure to adduce evidence by the parties, have been set aside.

7. in the present case also, the order passed by the Second Joint Civil Judge, Senior Division, Omerga is not passed on merits of the matter but has been passed since the Petitioner had failed to adduce evidence. In fact, it is specifically recorded by the

Reference Court that in order to substantiate the claim, the applicant has not adduced either oral or documentary evidence in support of his claim. Further referring negligence on the part of the Petitioner and taking serious view of the matter, it is held that compensation granted by the Land Acquisition Officer is sufficient and the Reference has been disposed of.

8. In view of the settled legal position, which has been laid down by various judicial pronouncements of this Court as well as Supreme Court, the impugned order passed by the Reference Court deserves to be quashed and set aside.

9. In the result, order dated 22nd October, 2018 passed by 2nd Joint Civil Judge, Senior Division, Omerga, District - Osmanabad in LAR No. 780 of 2009 (Old LAR No. 476 of 2003) is quashed and set aside and the LAR No. 780 of 2009 is restored to its original file. The parties are directed to appear before the Reference Court on 20th February, 2025. The Reference Court shall dispose of the Land Acquisition Reference, after affording opportunity to adduce evidence to the parties, as expeditiously as possible, preferably within a period of 6 months from the 20th February, 2025. Writ Petition is disposed of in above terms.

[MANJUSHA DESHPANDE]
JUDGE