

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

WRIT PETITION NO. 10040 OF 2015

Dilipsingh Motising Salok

...PETITIONER

versus

Pravin Pundlik Khandje

...RESPONDENT

.....
Mr. Avinash Khande, Advocate holding for
Mr. Amol Salok, Advocate for Petitioner
Mr. S.B. Ghute, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 7th OCTOBER, 2015

Order :-

1. Learned counsel for petitioner- original plaintiff contends that total area of land bearing Gut No. 260 of village Mahora, Taluqa Jafrabad is *admeasuring* 3 Hectare and 51 *Aar* and there are various sub-divisions in the same and are owned and possessed by various persons including plaintiff and defendant. Plaintiff is entitled to area of 40 *Aar* from said Gut number but he is in possession of less area than the one he is entitled to. According to him, certain portion of the land of the plaintiff is possessed by the defendant.

2. It is further contention that about 28 *Aar* land has been acquired for the purpose of road running over from Gut No. 259 to land Guts No. 260 and 261. Portion of land belonging to defendant has also been acquired for said purpose and consequently his portion of land should have been reduced from Gut No. 260. However, he is continuing to be

in possession of 59 Aar land which is clear indication of encroachment of the defendant on petitioner's land. For this purpose, earlier two orders had been passed by the trial court. However, absolutely erroneous and untenable reasons subsequently declined request under application under application Exhibits-26 and 28.

3. Learned counsel for respondent, however, opposes stating that hardly any fault can be found with the impugned order. Though there have been measurements twice and third application had been rejected yet this is the fourth application which had been moved by the petitioner. However, one has to bear in mind that this is a suit for removal of encroachment and for possession by petitioner. In earlier two measurements, encroachment has not been considered. In order to resolve the controversy involved in the matter, it would be expedient that entire land Gut No. 260 as originally subsisting before acquisition of land for road is measured and also to measure sub-divisions, according to the ownership and to assess whether there is any encroachment. Under the circumstances, I do not see, there is any point in getting bogged down by the fact that earlier application by the petitioner had been rejected and this is another application moved by him for said purpose, since consolidated challenge is posed in the present writ petition.

4. In view of aforesaid, it would be expedient that entire land Gut No. 260 of village Mahora, Taluq Jafrabad as originally subsisting before acquisition of land for road and also to measure sub-divisions in accordance with ownership of persons concerned and find out as to

whether upon acquisition of land for road, any encroachment has been caused.

5. With aforesaid directions, writ petition stands disposed of.

Sd/-

(SUNIL P. DESHMUKH, J.)

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, according to the ownership and to assess there is any encroachment if any

Having regard to accepted total area of land Gut No. 260 as originally subsisting and its sub-divisions, according to the ownership claimed by the parties at the point of time on which there is acquisition of land for road and area of possession of lands by respective owners now, it appears that commissioner can make assessment of the portions under encroachment, if any, without being bowed down by earlier challenge by the petitioner in the consolidation petition under which applications for re-measurement have been rejected.

3. Consequently, looking at the dispute, it would be expedient that total area of land Gut No. 260 of village Mahorabe taluqa Jafrabad along with its sub-divisions including acquired portion be measured.