

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

923 WRIT PETITION NO. 8207 OF 2015

**MALHARI SAKHARAM HOLKAR AND ANOTHERS
VERSUS
BABAN SAKHARAM GADAKH AND OTHERS**

Shri. Amol K. Gawali, Advocate, for petitioners.

Shri. Yuvraj V. Kakde, Advocate, for respondent Nos.1 to 11, 15 to 18

Shri. S.N. Kendre, Assistant Government Pleader, for respondent Nos.12 to 14.

CORAM: T.V. NALAWADE, J.

DATE : 15 OCTOBER 2016

ORDER:

1) The petition is filed to challenge the order made by the learned Civil Judge Senior Division, Ahmednagar on Exhibit 85 in Regular Civil Suit No.54/2011. Both the sides are heard. Learned Assistant Government Pleader is also heard.

2) The suit is filed against the petitioners and Government by other respondents for relief of direction to the Survey Officer for taking measurement of the land

and fix the boundaries of the land of the plaintiff and adjacent road. Other reliefs are consequential in nature as after fixing the boundaries, everything will be made clear. Lands of both the plaintiff and present petitioners if are measured, things will become clear and it will be easier for the Court also to decide the dispute. Prayer No.1 from the prayers of the plaint indicates the same thing. Unfortunately this Court in the past, in Writ Petition No.1634/2012 set aside the order of appointment of Court Commissioner, Surveyor made for taking such measurement and for fixing boundaries.

3) Present petitioners have grievance that the Government is allowed to make amendment of the written statement due to which the petitioners are feeling that without giving an opportunity to them the previous measurement will be used against the petitioners. When the petitioners were not party to the previous measurement there is no question of using that measurement against them. It appears that now the petitioners have realized that measurement is the best way out for both sides and for proper decision of the suit.

If there is such measurement even the case of the defendants, Government which is in respect of the previous measurement can be ignored. In view of these circumstances, learned counsel for the petitioners and the original plaintiff submitted that they are ready to bear the expenses of the measurement and the lands of both the sides should be measured to ascertain the existence of the road and its outer limit.

4) In view of this submission, the Surveyor of Tahsil office is appointed as Court Commissioner. He should make measurement of the lands of both the sides and also old Nagar-Junnar Road to ascertain the boundaries of both the lands and also of the road. Cost is to be equally borne by the petitioners and the original plaintiff and it is to be deposited in the trial Court before 18th November 2016. With the aforesaid observations the petition is disposed of.

Sd/-
(T.V. NALAWADE, J.)

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