

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

979 WRIT PETITION NO. 9398 OF 2016

AAJMODDIN BASHUMIYA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Bhosle Santosh C.
AGP for Respondent/State : S.N. Kendre
...

980 WRIT PETITION NO. 9627 OF 2016

MOHD EKBAL MOHD AFRODDIN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR NANDED
AND OTHERS

...
Advocate for Petitioner : Bhosle Santosh C.
AGP for Respondent/State : S.N. Kendre
...

CORAM : T.V. NALAWADE, J.
DATED : 20th October, 2016.

ORDER :

1. The first proceeding is filed to challenge the order made on Exh. 155 in Regular Civil Suit No. 103/2012, which is pending in the Court of Civil Judge, Senior Division, Bhokar and second proceeding is filed to challenge the order made on Exh. 148 in Regular Civil Suit No. 102/2012, which is pending in the same Court. Heard the learned counsel for petitioners.

2. The suits are filed against present petitioners by the

plaintiffs for removal of encroachment allegedly made by the petitioners. It is the case of plaintiffs that they are the owners of land Plot Nos. 15, 16 and 17 which are part of Gat No. 506. They want removal of encroachment and possession of the encroached portion from the present petitioners. It is the case of petitioners, defendants that after taking permission of Village Panchayat, they have made construction of the shops over or by the side of Village-Padan and that part does not belong to plaintiffs.

3. The learned counsel for petitioners submitted that in the past, petitioners had applied for appointment of Court Commissioner and such order was made. The learned counsel submitted that as the cost amount was not deposited in time, permission was sought to deposit the cost amount, but that application was rejected by the Trial Court. The learned counsel submitted that plaintiffs then applied for appointment of Court Commissioner for taking measurement of the lands. He submitted that present applications were filed when the matters were ready to deliver judgment and the Court has made the order of appointment of Surveyor for measurement of lands.

4. The learned counsel for petitioners submitted that in

the past, Local Body itself had got measured the lands and evidence is given on that measurement. He submitted that such evidence can be used by the Court. This submission is not at all acceptable. When the plaintiffs were not party to such measurement, which needs to be treated as private measurement, that measurement cannot bind the plaintiffs. In view of these circumstances, it is desirable that in the presence of both the sides, the measurement is taken through Commissioner, by surveyor. This Court holds that in view of the nature of dispute, the Trial Court has not committed any error in making the order of appointment of Court Commissioner. There are no merits in the petition. Both the petitions stand dismissed.

[T.V. NALAWADE, J.]

ssc/