

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 7397 OF 2016

Prakash Bapurao Kade.

.. Petitioner

Vs.

The State of Maharashtra & ors.

.. Respondents

Mr.Ajay Joshi a/w S.P.Rajepandhare, for the Petitioner.

Mr.S.D.Rayrikar-Assistant Government Pleader, for Respondent No.1.

Mr.Anand Kulkarni, for Respondent Nos. 5 to 12.

***CORAM : N.M.Jamdar, J.
Tuesday, 27 September 2016.***

P.C. :

Heard learned counsel for the parties. Considering the nature of dispute, by consent of parties taken up for final disposal.

2. The order in this Petition is passed by the learned Civil Judge Senior Division, Solapur dated 30 April 2016 allowing the application for appointment of Court Commissioner to measure the suit property. Generally this Court under Article 227 of Constitution of India would not interfere with the discretion used by the learned Civil Judge for appointment of Court Commissioner as that is a matter solely within the discretion of the learned Judge and generally no prejudice arises from such orders as the arguments on merits as regards the Commissioners report are kept open to be urged

at the time of trial. In the present case however the learned counsel for the Petitioner has pointed out that the Land Acquisition Reference No.9 of 2013 regarding apportionment has been referred to the learned Civil Judge for adjudication and it is in these proceedings that the Court Commissioner is appointed. It cannot be said that in a proceeding for apportionment, Court Commissioner cannot be appointed at all, however, in the present case there is a serious dispute as to what should be the basis on which the Court Commissioner will proceed. In the application filed by the Respondent Nos.5 to 12, the basis is taken as the order passed by the Tahsildar Mohol dated 26 March 2009. This basis has been seriously disputed by the Petitioner, as according to the Petitioner there have been further proceedings from this order and the challenge is pending in a suit. Therefore, there is a serious contest between the parties as what should be the basis on which the measurements should be carried out by the Court Commissioner. In the impugned order there is no reference to this contest between the parties and simplicitor the application is allowed. Though I am not inclined to interfere with the order of appointment of Court Commissioner *per se* I am inclined to direct the learned Civil Judge to fix the parameters for appointment of Court Commissioner after hearing both the sides. In case the learned Civil Judge finds that fixing of such parameters is not possible at all without deciding the entire dispute, it may be open to the learned Civil Judge, Senior Division Solapur, not to appoint the Commissioner. However, if it is possible to fix the parameters

after hearing both the sides, then the learned Civil Judge will proceed to do so. Writ Petition is accordingly disposed of with the above directions. Registry to communicate the order to the Court of Civil Judge Senior Division Solapur, at the earliest. The impugned order accordingly stands modified in above terms.

(N.M.Jamdar, J.)