

Sequeira

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

WRIT PETITION NO. 9963 OF 2015

M/s.Unique Multicon India Pvt. Ltd. .. Petitioner
Vs
Shahji Bhanudas Bhad & anr. .. Respondents

Mr.Drupad Patil, for the Petitioner.
Mr.P.P.Parab, for Respondent Nos.1 & 2.

***CORAM : N.M.Jamdar, J.
Thursday, 27 October 2016.***

Oral Order :

By this petition, the Petitioner has challenged the order passed by the Civil Judge Senior Division Pune, dated 14 September 2015 appointing District Inspector of Land Records Pune, to carry out measurements of the land.

2. The learned Civil Judge found that when Taluka Inspector of Land Records had carried out the measurements, he had not filed a detailed report demonstrating the basis as to how the measurement was carried out and the learned Civil Judge found that it will be appropriate that a superior authority i.e. District Inspector of Land Records should carry out the measurement.

3. The learned counsel for the Petitioner submitted that when the measurement was carried out and map was prepared all objections of Respondents regarding the measurement carried out could have been kept open and all the questions could have been put to the Commissioner during his cross-examination. He submitted that if the detailed report was not filed the Commissioner / surveyor should have been called upon to produce the said report.

4. The order challenged is purely interlocutory. There is neither any appeal or revision provided against this order. It is not for every error that jurisdiction under Article 227 has to be exercised. Nothing is shown that it is a mandatory requirement that if basis of the measurement is not placed on record along with the map then the trial Court is under obligation to call upon the surveyor to submit a report before asking a superior officer to carry out measurement. This discretion of the learned Judge to appoint a Commissioner if the learned Civil Judge finds that the basis for measurement has not been placed on record. Merely because the map which is submitted by the surveyor seems to favour the case of the Petitioner, it cannot be that the discretion of the learned Judge to hold that the foundation of measurement has not been placed on record satisfactorily and for that purpose measurement by superior authority is required, is taken away. In any case the learned Civil Judge has taken care that such lapses do not occur by directing the District Inspector of Land Records to carry out the measurement and submit a report. Therefore, no failure of

justice has occasioned by the impugned order. It cannot be presumed that the District Inspector of Land Records will deviate from the correct situation neither it is the case of the Petitioner.

5. The learned counsel for the Petitioner then submitted that the learned Civil Judge has directed the District Inspector of Land Records to refer only to measurement map while carrying out the measurement. The learned Civil Judge in the operative portion of the order has referred to the document but it does not mean that if other relevant parameters are to be taken into consideration, such as consolidation scheme and the documents which are referred to in the guidelines framed by the State Government under the Maharashtra Land Revenue Code, 1966 which are necessary to be taken into account, are excluded from consideration. It goes without saying that the District Inspector of Land Records will refer to all such necessary documents which are required for carrying out proper measurements inclusive of the consolidation scheme which is a statutory scheme. It is also clarified that when the District Inspector of Land Records will submit a report, both parties will get their opportunity and all contentions of the parties are kept open. The learned Civil Judge Pune, has already taken care that the situation does not recur by directing the District Inspector of Land Records to file a detailed report to show how the measurement is carried out, which document has been referred to for the measurements and details of measurement. In these circumstances no interference is necessary.

All contentions of the parties on merits are kept open. Writ Petition is accordingly disposed of.

(N.M.Jamdar, J.)