

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3153 OF 2017

DAGDU RAMA PAWAR AND ANOTHER
VERSUS
SHIVAJI LIMBA RATHOD

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Advocate for Petitioners : Shri Yadkikar Amit A.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 11, 2017

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PER COURT :-

1. The petitioners are aggrieved by the order dated 15.11.2016, by which, application Exhibit 20 filed by the petitioners / plaintiffs has been rejected.

2. I have considered the strenuous submissions of the learned Advocates for the petitioners and have gone through all the grounds formulated by them in this petition.

3. By application Exhibit 20, the petitioners desire that the TILR be appointed as a Court Commissioner to measure the suit land in S. No. 58 in order to recognize or identify that portion of the land which is in possession of the petitioners pursuant to the land acquisition proceedings of 1983 and the sale deed of 1984. The contention of the defendant is that there is no land in the

possession of the petitioners.

4. The trial Court while considering the contentions of the litigating sides has concluded that in so far as any encroachment is concerned, the documents with regard to the land acquisition proceedings would clearly indicate the area of land acquired, its dimensions and the neighbouring lands. If the said record is produced, it would indicate the exact portion of land acquired and the area from which it has been acquired. The remaining land would, therefore, amount to the suit land.

5. The petitioners submit that after the sale deed of 1984, it needs to be seen as to which portion of the land would remain in the possession of the petitioners and the respondents.

6. I do not find that the trial Court can be said to have committed any error in concluding that the official record of the land acquisition proceedings, which is precise and definite, needs to be first brought on record and hence the application for appointment of Court Commissioner need not be entertained. I find that in the event the petitioners bring such record before the trial Court, it would assist all the parties and probably may not require the appointment of a Court Commissioner. The

petitioners can thereafter, take a decision after perusing the land acquisition proceedings record. Needless to state, the trial Court will also assess the said record in the light of the contentions of the parties, keeping in view the scope of Section 75 and Order XVI Rule 9 of the CPC.

7. In the light of the above, this petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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