

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

WRIT PETITION NO. 4445 OF 2017

BALASAHEB SHIVAJI PATAYIT
VERSUS
THE COLLECTOR, BEED AND OTHERS.

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Advocate for Petitioner : Shri Kudale Bhagwan S.
AGP for Respondents/ State : Shri S.N.Kendre.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th August, 2017

Per Court:

1 The Petitioner is aggrieved by the order dated 22.02.2017 passed by the Trial Court rejecting the application for appointment of a Court Commissioner.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned order. The grievance is that 45 R land has been acquired by the Government after the institution of RCS No.164/2012. Therefore, it is necessary that the suit land be remeasured to find out as to where the encroachment now lies and how much portion of the suit land could be said to have suffered encroachment at the hands of the Defendants.

3 Reliance is placed upon the judgments of this Court in the

matters of Vasant Tukaram Prabhu vs. Xalinibai Borcar alias Shalinibai Borkar, 2014 (5) Mh.L.J. 382 and Manikrao Ramji Chawake vs. Ashok Ambadas Gawade and another, 2014 (2) Mh.L.J. 840.

4 I have considered the submissions of the learned Advocate appearing for the Petitioner and the learned AGP on behalf of Respondent Nos.1, 2 and 3.

5 The suit preferred by the Petitioner/ Plaintiff is based on an earlier measurement of the land by the Taluka Inspector of Land Records (TILR). The said measurement and the map is on record. The portion highlighted by red colour is the subject matter of the suit.

6 It is trite law that the measurement by the TILR and the map furnished by the said Authority can be dealt with in the adjudicatory process of the suit. The party aggrieved by the said measurement has an option of examining and cross-examining the TILR and bringing such evidence on record which would convince the Trial Court that the measurement and the map placed on record is unreliable, not dependable and would not assist the Court in the proper adjudication of the suit.

7 Section 75 read with Order-26 Rule-9 of the Code of Civil Procedure would clearly indicate that the Court Commissioner is to be appointed only for eliciting further information which the Court may find necessary for its assistance.

8 The contention of the Petitioner that 45 R land was acquired

by the Government during the pendency of the suit and that has led to some confusion, is most confounded and does not deserve to be entertained. The Government does not acquire the land blindfolded. A proper procedure is followed under the Land Acquisition Act, 1894 and after hearing the objections of the affected parties, the precise portion of the land which is desired to be acquired, is acquired. In such an acquisition process, the land to be acquired is marked and identified and the records are maintained in that context.

9 If the Petitioner is of the view that such acquisition has created a confusion about the encroachment, the onus and burden would lie on the Petitioner/ Plaintiff to establish such confusion by recording oral evidence. Even otherwise, the record of acquisition can be compared with the map already on record which would indicate the position of the suit land prior to the acquisition. On the basis of such record, whether, any encroached portion has been acquired or whether, the portion different and distinct from the encroached portion has been acquired, can be identified.

10 Insofar as the judgments of this Court in Vasant and Manikrao cases (supra) are concerned, there is no dispute that where there is a boundary dispute and some encroachment is to be noticed, the Court Commissioner can be appointed. In the instant case, earlier measurement by the TILR and the map placed on record indicate some encroachment.

The record of acquisition of 45 R land maintained by the Government which is party to the proceedings, can also be considered and would render assistance to the Trial Court.

11 Considering the above, I do not find that the rejection of Exhibit-48 by the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)