

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

Writ Petition No. 09209 of 2017

District : Ahmednagar

Vishal Bapusaheb Gulve,
Age : 49 years,
Occupation : Agriculture,
R/o. Ozar, Taluka Sangamner,
District Ahmednagar.

.. Petitioner.

versus

1. The Range Forest Officer,
Division-1, Sangamner,
having its office at Sangamner,
Taluka Sangamner,
District Ahmednagar.
2. The State of Maharashtra,
Through its Collector,
Ahmednagar,
District Ahmednagar.
3. The Tahsildar,
Sangamner,
Taluka Sangamner,
District Ahmednagar.
4. The Kamgar Talathi,
of Village Ozar,
Taluka Sangamner,
District Ahmednagar.

.. Respondents.

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Mr. S.K. Shinde, Advocate, for the petitioner.

*Mr. S.P. Tiwari, Assistant Government Pleader, for
respondents no.01 to 04.*

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 25TH JULY 2017

ORAL JUDGMENT :

01. Heard learned counsel for the petitioner and learned assistant government pleader for respondents.

02. The petitioner aggrieved by order passed by the Civil Judge (Senior Division), Sangamner, dated 04th January, 2017, rejecting application - exhibit 45 in regular civil suit no. 840 of 2013, is before this court.

03. Exhibit 45 was an application for appointment of court commissioner pursuant to provisions of order XXVI rule 9 of the code of civil procedure, 1908.

04. The petitioner who is plaintiff in the suit, claims that property bearing gut no. 210/1 admeasuring 1 Hectare, 44 R. situated at village Ozar (kd.), Taluka Sangamner, District Ahmednagar, is a government property being occupied since 1955-56 by their ancestors. The property has since then been occupied by ancestors of the petitioner. It is further case of the petitioner that, lot of expenses have been incurred in development of the land. Around 1986, a scheme had been implemented in the village, however, Talathi did not take entries of petitioner's name in cultivation column although land was irrigated and petitioner was

taking crops in the land. He had laid pipeline having length of 1000 feet. The petitioner is in possession of the land, yet same has been denied in the written statement. In order to bring forth before the court, factual position, it would be expedient that a court commissioner is appointed to verify the actual position. With reference to certain judgments, the application was sought to be justified by the present petitioner. The application was strongly resisted on behalf of defendants and the court has rejected the application - Exhibit 45.

05. The court in paragraphs no.10, 11 and 12 appears to have considered relevant aspects. The court has recorded that the suit is for declaration of ownership, mandatory injunction and injunction. The court has further recorded that the evidence has been closed and the matter is at the stage of final arguments. Several adjournments have been sought and thereafter application has been filed. The court has further observed that the main purpose underlying application appears to bring on record evidence by way of court commissioner which precisely is not function of the commission.

06. Having regard to the aforesaid, it does not appear to be a case which requires intervention in exercise of writ jurisdiction.

07. The writ petition, as such, is dismissed. However, it would be open for the petitioner to resort to section 105 of the code of civil procedure, 1908, if occasion for the same arises.

(Sunil P. Deshmukh)
JUDGE

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