

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

**CIVIL APPLICATION NO.462 OF 2017
IN
WRIT PETITION NO.10161 OF 2013**

**Range Forest Officer, Bordi & ors. : Applicants/Respondents
versus
TEMA India Limited
Through its Director Shri Chetan Doshi : Respondent/Petitioner.**

**Mr. S H Kankal, AGP, for the Applicants – original Respondents.
Mr. Surel Shah a/w Ms. Khooshnum R Daviervala & Mr. Yazdi P Jijina i/by
Mulla & Mulla & Craigie Blunt & Caroe for the Respondent – original
Petitioner.**

**CORAM : R. M. SAVANT, J.
DATE : 17th March 2017**

P.C.

1 The above Civil Application has been filed by the Applicants/original Respondents principally for the relief that the Applicants – original Respondents in the Writ Petition be permitted to take all the steps required to remove the encroachment from village Acchad S.No.101 as per the measurement of subject land by the Deputy Superintendent of Land Records, Talsari, Dist. Palghar.

2 The above Petition came to be disposed of by the Minutes of order dated 06/02/2014. The principal feature of the said Minutes of Order is contained in clause (1) thereof which is for the sake of ready reference reproduced herein under :-

“For Petitioners private land as well as for Govt. forest land DSLR Talsari will carry out Joint measurement and demarcate the boundaries of Petitioner's Private Survey Nos.7, 8, 9 and protected forest Survey No.101 of Mouze Acchad, Dist. Thane in presence of concerned forest officers and Petitioners or Petitioners representative.”

The said clause (1) was thereafter modified to the extent of Survey Numbers mentioned therein by the order dated 30/07/2014. However, the fact remains that the land claimed by the Petitioner TEMA India Limited and the land which is claimed by the Forest Department was to be jointly measured. The said Minutes of Order provides that the Petitioner would pay for the measurement of their land whereas the Forest Department would bear the expenses of the land of the Forest Department. In terms of Clause (7) of the said Minutes of Order the Petitioner was to be heard after the joint measurement was carried out and report prepared.

3 In view of the fact that the Petitioner did not deposit the fees for the measurement of its land, the measurement of its land was carried out ex-parte by the Forest Department through the office of District Superintendent of Land Records, Talasari, Dist. Palghar. It is on the basis of the report submitted by the office of the District Superintendent of Land Records that the instant Civil Application has been filed for the reliefs prayed therein.

4 By the order dated 03/03/2017 passed in the above Civil Application the original Petitioner was directed to file an affidavit of a responsible officer of the Petitioner stating the reason why the amount which was required to be deposited by way of fees towards measurement of its land was not deposited by the Petitioner. In terms of the said directions, an affidavit has been filed by Shri Martin Luther – Head HR, IR & Administration of the Petitioner explaining the circumstances in which the fees could not be deposited by the Petitioner. The sum and substance of the reasons is that the officers who were handling the matter in so far as joint measurement is concerned had left the services of the Petitioner and therefore the Petitioner under a bonafide belief that the amount which was required to be deposited by way of fees was in fact deposited on behalf of the Petitioner. In the said affidavit various steps that the Petitioner has taken to deposit the amount have been mentioned.

5 In my view, in the light of the reasons mentioned in the said affidavit one final indulgence would have to be shown to the Petitioner in the matter of carrying out of the joint measurement. The learned counsel appearing for the Petitioner Shri Surel Shah states that the Petitioner would deposit the fees for the joint measurement with the Deputy Superintendent of Land Records, Talasari, Dist. Palghar within two weeks from date. If the amount is deposited by the Petitioner within two weeks from date, the Deputy

Superintendent of Land Records, Talasari is directed to issue notice to the parties to remain present at site on the date and time that would be fixed by the Deputy Superintendent of Land Records, Talasari for carrying out the joint measurement. In so far as the said joint measurement and the process to be followed thereafter the directions as contained in the Minutes of Order dated 06/02/2014 would continue to apply. The learned counsel for the Petitioner Shri Surel Shah states that following officers on behalf of the Petitioner would remain present at side (1) Shri Vivek Soans – Vice President and (2) Mr. Nirmal Singh – AGM – HR, IR & Admin. The original Petitioner would now deposit the fees of joint measurement, and not only for its part of land but also for the land of the Forest Department.

6 In view of the directions as above, the above Civil Application would not survive. However, the Applicants/Respondents i.e. the Forest Department would be at liberty to file a fresh Application contingent upon the result of the joint measurement. The above Civil Application is accordingly disposed of.

[R.M.SAVANT, J]