

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.437 OF 2017

Arihant Mitra Mandal Charitable Trust represented  
by Dinesh Hiralal Shah and others ... Petitioners  
Vs.  
Nashik Municipal Corporation and another ... Respondents

Mr. Sham Walve i/b. Mr. Sachin P. Gorwadkar for Petitioners.  
Ms Neeta V. Masurkar for Respondent No.2.

**CORAM : R. G. KETKAR, J.**  
**DATE : JANUARY 23, 2017**

**P.C. :**

Heard Mr. Walve, learned Counsel for petitioners and  
Ms Masurkar, learned Counsel for respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 23.11.2016 passed by the learned 4<sup>th</sup> Joint Civil Judge, Senior Division, Nashik below exhibit-149 in Regular Civil Suit No.519 of 2009. By that order, the learned trial Judge rejected the application made by the plaintiffs for appointment of Taluka Inspector of Land Records (T.I.L.R.) or the competent authority from the said office for the purpose of measurement of the suit property and for bringing evidence on the point of jurisdiction over the suit property.

3. Mr. Walve submitted that respondent No.1, hereinafter referred to as 'defendant No.1', is the Municipal Corporation constituted under the provisions of the Maharashtra Municipal Corporations Act (for short 'Corporations Act'). Respondent No.2, hereinafter referred to as 'defendant No.2', is the Cantonment Board, constituted under the provisions of the Cantonments Act, 2006 (for short 'Cantonments Act'). He invited my attention to paragraph 12 of the plaint. He submitted that

on one hand defendant No.1 - Corporation claims that the suit property is situate within its municipal limits and on the other, defendant No.2 - Cantonment Board claims that the suit property is situate within its limits. It is, therefore, necessary to appoint T.I.L.R. as a Court Commissioner for measurement of the suit property as also for bringing evidence on record as to whether the suit property falls within the limits of defendant No.1 or defendant No.2.

4. On the other hand, Ms Masurkar supported the impugned order. She submitted that whether the property situates in the municipal limits or cantonment board limits is regulated by the notifications issued under the respective Acts and for that purpose, appointment of Court Commissioner is not necessary.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As far as defendant No.1 Corporation is concerned, it is constituted under the provisions of the Corporations Act. Section 3 of the Act deals with specification of larger urban areas and constitution of Corporations. As far as Cantonments Act is concerned, Section 3 defines the 'Cantonments'. Section 4 talks about alteration of limits of cantonment. Perusal of Section 3 of the Corporations Act and Sections 3 and 4 of the Cantonments Act shows that the areas are set out in the notifications issued under these provisions. In other words, it is a matter of documentary evidence in the shape of notifications issued by the Competent Authority. For that purpose, appointment of Court Commissioner, namely, T.I.L.R. is absolutely unwarranted. Hence, I do not find any case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order,

affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

**(R. G. KETKAR, J.)**

*Minal Parab*