

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

WRIT PETITION NO.6544 OF 2018

Jyotiram s/o Sarjerao Pandharpote & another ... Petitioners

Versus

The Collector, Beed & others ... Respondents

Mr.M.B.Sandanshiv, Advocate for the petitioners.

Mr.S.W.Munde, AGP for Respondent No.1.

Mr.S.R.Choukidar, Advocate for Respondent No.2.

Mr.V.D.Salunke, Advocate for Respondent No.3.

Coram : N.M. Jamdar, J.

Date : 30 November 2018.

Oral Order :

1 Heard learned Counsel for the parties.

2 The petitioners have challenged the order passed by the learned Civil Judge, Senior Division, Majalgaon, dated 2 January 2018, below Exhibit-89 in RCS No.106 of 2011. By this order, the application moved by the petitioners to appoint Court Commissioner to prepare the site report is rejected.

3 The petitioners had earlier made an application for

appointment of Court Commissioner and the learned Civil Judge, by an order passed below Exhibit-22, appointed the TILR, Majalgaon as Court Commissioner. The Court Commissioner had submitted its report. The TILR – the Court Commissioner, who prepared the earlier report, has expired. The petitioners, thereafter, have sought appointment of Court Commissioner again as the officer, who prepared the earlier report, could not be examined. The respondents have contested the earlier report and in that regard, the examination of the officer, who prepared the earlier report, would be necessary.

4 Learned Counsel for the respondents submits that there was delay in making the request and the petitioners were aware much earlier that the officer, who prepared the earlier report, had expired. The learned Civil Judge has also observed the same. However, it has to be noted that the learned Civil Judge had passed an order appointing the Court Commissioner, which order was not challenged. The appointment of Court Commissioner by the learned Civil Judge was for a specific purpose and this appointment of the Court Commissioner cannot, therefore, be simply nullified because the officer, who had prepared the earlier report, has expired.

5 In these circumstances, it was put to the learned Counsel

for the respondents, whether the respondents would agree that the other officer would depose in support of the report, to which the learned Counsel for the respondents has a objection.

6 Considering these circumstances and that the order of appointment of the Court Commissioner was passed earlier, which has to be given meaningful effect, the application for appointment of new Court Commissioner, therefore, will have to be granted.

7 Accordingly, Writ Petition is disposed of by setting aside the order dated 2 January 2018 and allowing the application below Exhibit-89 in RCS No.106/2011. Order accordingly.

8 The learned Civil Judge will issue necessary directions for further steps to be taken at the earliest and give a time bound programme for the TILR to carry out survey and submit the report.

9 Writ Petition is disposed of in above terms.

In view of disposal of writ petition, Civil Application does not survive and stands disposed of.

N.M. Jamdar, J.