

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

WRIT PETITION NO. 6523 OF 2017

PRALHAD DAMODHARRAO BADVANE

VERSUS

GOVIND VISHWANATH PHATALE AND ANOTHER

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Advocate for Petitioner : Mr. Godhamgaonkar P.G.

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CORAM : V.K. JADHAV, J.

Dated: February 06, 2018

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PER COURT :-

1. I find no substance in this writ petition.
2. The petitioner/original defendant has filed an application exh.68 in RCS No.200/2011 for calling the record of the T.I.L.R. Office. It is the case of the petitioner/defendant that, though the petitioner/defendant has requested the said office to provide him the copy of the letter in which office have given reasons for not measuring the land, copies were not supplied to the petitioner under one or another pretext. Other side has strongly resisted the application and the trial court has rejected the application Exh.68 by the impugned order dated 5.8.2016. Hence, this

aaa/-

writ petition.

3. Learned counsel for the petitioner/defendant submits that, respondents/plaintiffs claims possession over the suit plot within the boundaries mentioned in the claim clause and this aspect has been disputed. The Society in which the subject plot is situated, had applied for joint measurement in the office of the TILR and the office has refused to carry out the measurement for the reason that the plot holders are not occupying the plots as per the sanctioned lay out. Learned counsel submits that, this goes to the root of the dispute in the matter and as such, record of the said T.I.L.R. office refusing to measure the plots of the said society is required to be called before the Court.

4. On careful perusal of the application exh.68, it appears that, the petitioner/defendant has requested the Court by filing an application exh.68 to call the entire record concerning to the measurement of the plots of said Society. It is a part of the record that, the

concerned office has refused to measure the plots of the Society on the ground that the plot holders are not occupying the plots as per the sanctioned lay out and as such, there is no measurement, no report and no map is prepared by the said office. Learned counsel for the petitioner has shown this court the letter issued by the Deputy Superintendent of Land Records, Nanded addressed to the President/Secretary of Sanmitra Sahakari Gruha Nirman Sanstha, Ltd., Nanded mentioning therein that, the measurement cannot be carried out as requested by the Society for the reasons as detailed in the said communication. In my considered opinion, said communication is sufficient for the petitioner/defendant to substantiate his case before the trial court. Further it is for the respondent/plaintiff to substantiate his suit instituted simplicitor for a decree of perpetual injunction. It further appears from the impugned order that, evidence of the respondent/plaintiff is already over and, present petitioner has failed to cross-examine the plaintiff despite opportunities given to him. Thereafter, No-cross order has been

passed against the petitioner/defendant. Respondents/plaintiffs have already closed their evidence by filing purshis however, if, the petitioner/defendant gets copy of any relevant document from the said office, the petitioner/defendant would be at liberty to file an application for production of the said document before the Court and also for recalling the plaintiff for cross-examination in the light of the said document and the trial court may decide the said application on its own merits, if filed. Otherwise, I find no substance in this writ petition. Hence, following order.

O R D E R

Writ Petition is hereby dismissed. No costs.

(V.K. JADHAV, J.)

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