

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

WRIT PETITION NO.11789 OF 2017

UDDHAV JAGANNATH SOLANKE AND ANOTHER
VERSUS
THE COLLECTOR BEED AND OTHERS

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Advocate for the Petitioners : Shri Chavan Kalyan S.
AGP for Respondents 1 and 2 : Shri S.R.Yadav.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th December, 2018

Per Court:

1 The Petitioners/ original Plaintiffs are aggrieved by the order dated 19.07.2017 passed below Exhibit 38 by which, the Trial Court has rejected the said application for seeking appointment of a court commissioner in RCS No.283/2005.

2 I have heard the learned Advocate for the Petitioners and have gone through the grounds formulated by him in the memo of the petition.

3 This Court has consistently taken a view that the court commissioner should not be appointed till the recording of oral evidence is concluded and for collection of evidence. Some of the orders passed by this Court holding the said view are as under :-

(a) Syed Mushtaque Ahmad Syed Ismail and others vs. Syed Ashique Ali Khan Haidar Ali, 2012 (1) ALL MR 80 : 2011 (6) Mh.L.J. 334.

(b) Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013).

(c) Chandrakant Kashinath Dike and others vs. Smt. Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.

(d) Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.

(e) Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.

(f) Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP No.1096/2018 dated 31/01/2018).

(g) Baburao Jairam Borade vs. Fakira Tukaram Lanekar, Writ Petition No.1743/2018 decided on 28.08.2018 (Aurangabad Bench).

4 In the instant case, when the application Exhibit 38 was filed, the application for seeking temporary injunction (Exhibit 5) was yet to be decided. The issues were yet to be cast. Notwithstanding the above, the

Petitioners/ Plaintiffs have filed Exhibit 38 setting out the activities that the court commissioner should conduct and submit a report. The reasons for appointment of a court commissioner are set out below paragraph 3. A cursory glance at those reasons would clearly indicate that the Plaintiffs desire to collect evidence. The Trial Court has, therefore, rightly rejected the Exhibit 38.

5 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

6 It is, however, observed that after the conclusion of the recording of oral evidence, if any of the litigating sides desire the appointment of a court commissioner, such an application would be considered on its own merits.

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(RAVINDRA V. GHUGE, J.)