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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.198 OF 2015
WITH
CIVIL APPLICATION NO.1688 OF 2015

Suresh Annaji Patil and Anr. ... Petitioners
Vs.
The Nashik Municipal Corporation and Ors. ... Respondents

Mr. Tushar N. Sonawane for the Applicant.
Mr. R.D. Soni a/w Mr. V.R. Kasle I/by Ram and Co. for the
Petitioners.
Mr. Murlidhar L. Patil for the Respondent Nos.1 and 2.
Ms. Nisha Mehra, AGP for the Respondent No.4.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 25th JUNE 2018

P.C.

1 By this petition under Article 226 of the Constitution of India, the challenge is mainly to an order dated 1st November 2014 passed by the second respondent who is the Commissioner of the first respondent – Municipal Corporation. By an order dated 11th April 2017 passed by a Division Bench of this Court, the following directions were issued to Takuka Inspector of Land Records :-

“4] We, accordingly, direct the concerned TILR to carryout comprehensive survey of the subject property including the property of the petitioner, the 18 meters DP Road passing through the Petitioner's construction and adjacent property. While carrying out survey, the TILR is entitled to look into the

original record of the Corporation, record of sanctioned DP Plan and other relevant documents. The survey be carried out in the presence of the authorized representatives of the contesting parties. The costs of the survey shall be borne by the Petitioner. After carrying out the survey, the TILR shall submit the report through Government Pleader, High Court Bombay in sealed packet. This exercise shall be carried out within three weeks from today.”

2 In terms of the said order, a survey was carried out by the Deputy Superintendent of Land Records, Nashik after notice to the petitioners, Nashik Municipal Corporation and applicants in Civil Application No.1688 of 2015. Accordingly, on 5th June 2017 a report has been submitted by the Deputy Superintendent of Land Records, Nashik enclosing therewith a survey map.

3 The impugned order was passed by the Municipal Commissioner. For giving effect to the order dated 7th December 2011 passed by a Division Bench of this Court in Writ Petition No.1718 of 2011, it is necessary for the Commissioner to consider the survey and measurement map drawn by the Deputy Superintendent of Land Records, Nashik. Therefore, it will be appropriate if by setting aside the impugned order, we direct the Municipal Commissioner to pass a fresh order in terms of the order dated 7th December 2011 after considering the survey report.

4 As survey was carried out after notice to the applicants in Civil Application No.1688 of 2015, it will be appropriate if the Municipal Commissioner grants opportunity of being heard to the said applicants. It is not necessary for us to decide the wider question whether the applicants in the civil application are necessary and proper party to the petition.

5 At this stage, unless proper order passed by the Municipal Commissioner is available, the other reliefs which are prayed for in this petition cannot be considered.

6 Accordingly, we pass the following order :-

ORDER

- (i) The impugned order dated 1st November 2014 (Exhibit-“T” to the petition) is hereby quashed and set aside. We direct the petitioners, the representative of Nashik Municipal Corporation and the applicants in Civil Application No.1688 of 2015 to remain present in the office of the Municipal Commissioner on 11th July 2018 at 11.00 am for fixing the schedule of hearing. A true copy of the report submitted by the Deputy Superintendent of Land Records, Nashik along with survey map shall be produced before the Municipal Commissioner. It is obvious that the Municipal Commissioner will have to consider the said survey map after hearing all the parties in the light of the fact that the survey map has been prepared by a survey officer under the Land Revenue Code, 1966 in terms of this order dated 7th December 2011;
- (ii) The Municipal Commissioner shall pass a fresh order on or before 11th October 2018;
- (iii) We make it clear that we have made no adjudication on the merits of the controversy;

- (iv) The petition is disposed of with the above directions;
- (v) Civil Application does not survive and the same is disposed of.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)