

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****WRIT PETITION (ST) NO. 23259 OF 2018**

**Mrs. Yashoda Jyotiram Mane,  
since deceased through her legal heirs and  
representatives & Ors.**

**..... Petitioners**

**VERSUS**

**Chief Officer,  
Navghar Manikpur Nagarparishad,  
Mauje-Navghar  
now Vasai Virar City Municipal  
Corporation & Ors.**

**..... Respondents**

Ms.Neeta Karnik for the Petitioners.

Ms.Swati H. Sagvekar for the Respondent no.1.

**CORAM : R.D. DHANUKA, J.**

**DATE : 27<sup>th</sup> SEPTEMBER, 2018**

**P.C.**

Ms.Karnik, learned counsel for the petitioners tenders affidavit of service and would submit that the respondent no.2 has been served and would submit that the proceedings before the lower court filed by her clients were served upon the respondent no.2 through publication in the newspaper Navshakti dated 3<sup>rd</sup> February, 2006. The respondent no.2 was absent before the lower court also inspite of such public notice. Affidavit of service is taken on record.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the orders dated 13<sup>th</sup> June, 2018 and 29<sup>th</sup> June, 2018 passed by the learned trial judge below Exs.72 and 73.

3. The learned District Judge by an order dated 29<sup>th</sup> June, 2018 passed below Ex.1 declared the evidence of the petitioners as well as the respondents as closed and posted the civil miscellaneous application for arguments.

4. A perusal of the record indicates that the petitioner had called upon the commissioner who has submitted a report and whose report was marked as exhibit by the learned trial judge to examine him as witness. The said commissioner however could not attend the proceedings for recording on the ground that he was sick. Learned District Judge however inspite of issuing the witness summons has closed the evidence of the petitioners. The petitioners have already examined one of the witness in support of their claim for compensation.

5. The another grievance of the petitioners is that the petitioners had called upon the respondent no.1 to produce certain documents which the respondent no.1 refused to produce. The learned District Judge rejected the application of the petitioners for issuance of the witness summons against the respondent no.1 to produce the documents mentioned in the said application on the ground that the petitioners can produce the certified copies of the documents. The petitioners thereafter applied for certified copies of the documents to the respondent no.1. It is the case of the petitioners that the respondent no.2 though supplied certain documents the same were irrelevant.

6. In my view, since the request of the court commissioner is marked as exhibit, he is required to be examined by the petitioners as one of the witness. He had expressed his inability at that time, because of his sickness to remain present before the learned District Judge as a witness. The said witness would be a relevant witness according to the petitioners.

7. The learned District Judge – 1 is accordingly directed to issue a witness summons upon the T.I.L.R., Vasai who has responded to the letter addressed by the petitioners on 2<sup>nd</sup> July, 2016 annexed at Ex.K to the petition with a direction to remain present for the purpose of recording evidence expeditiously.

8. Insofar as production of documents is concerned, since according to the petitioners the respondent no.1 has not produced the relevant documents, the learned District Judge is directed to issue witness summons upon the respondent no.1 to produce the relevant documents prayed for in application below Ex.72 before the learned District Judge on the date convenient to the learned Judge. If any such summons is issued by the learned District Judge upon the concerned Officer of the respondent no.1, the relevant documents prescribed in application below Exs. 72 and 73 shall be produced by the said witness before the learned District Judge without fail.

9. Impugned order dated 29<sup>th</sup> June, 2018 thus passed by the learned District Judge -1 Vasai is quashed and set aside.

10. It is made clear that though the respondent no.1 has not led any evidence before the learned District judge in the said Misc. Application No. 3 of 2007, since the learned A.G.P. seeks to lead evidence before the learned District Judge -1, I am inclined to accept the said request and to permit the respondent no.1 to lead proper evidence after completion of the further evidence as may be laid by the petitioners.

11. The respondent no.1 is directed to furnish the list of the witnesses and also affidavit of evidence of the first witness within three weeks from today and shall serve a copy upon the petitioners' advocate simultaneously.

12. Hearing of the Civil Misc. Application No. 3 of 2007 is expedited.

13. Both the parties are directed to co-operate with each other and with the learned District Judge in disposing of the said application expeditiously.

14. The learned District Judge is directed to dispose of the application within one year from the date of communication of this order.

15. Writ petition is allowed in the aforesaid terms. No order as to costs.

16. The parties to act on the authenticated copy of this order.

**[R.D. DHANUKA, J.]**