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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6758 OF 2017**

Sou Indutai Bajirao Pawar	...	Petitioner
V/s.		
Maruti Mahadev Durgavale	...	Respondent

Mr. Pramod J. Pawar, for the Petitioner.
Mr. Kalpesh U. Patil, for the Respondent .

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for the respondent.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 13.1.2016, passed by 7th Joint Civil Judge Junior Division, Karad passed below Exh.113 in R.C.S. No.99 of 2010.

3] Application at Exh. 113 was filed by the petitioner, who is original plaintiff in a suit. He has filed suit for injunction simpliciter restraining respondent defendant from carrying out construction over the suit property, contending inter-alia that by undertaking such construction, respondent is making encroachment on his plot. During the pendency of the suit, an application for interim relief filed by him,

came to be rejected. Against the said order, Misc.Civil Appeal also came to be dismissed.

4] The petitioner, has thereafter, filed an application for appointment of Court Commissioner to inspect the suit plots both the parties. Accordingly, an advocate was appointed by the trial Court as Court Commissioner for inspection of the suit property. When the said order was challenged before this Court in W.P. No.4173 of 2010, this Court vide its order dated 21st September, 2010, with consent of learned counsel for petitioner therein, disposed of the said petition with direction that the trial Court shall appoint TILR as Court Commissioner to measure and inspect the suit property, being plot Nos. 12, 17 and 18 in Survey No.138/3 situate at village Goleshwar, to fix their boundaries and to show the construction on the said plots. The petitioner was directed to bear the costs of Court Commissioner.

5] According to learned counsel for the petitioner, the petitioner has paid costs of about Rs.25,000/- towards commission fee and thereafter TILR has filed his report after measurement of the suit property. However, while doing so, the TILR has not implemented the order of this Court of fixing the boundaries of these three plots and hence the petitioner has filed the application at Exh.113 before the trial Court for direction to the TILR to fix the boundaries.

6] This application was resisted by the respondent and the

trial Court has, therefore, called upon the views of the TILR, on this application, to know whether he can fix such boundaries. The TILR has submitted his report stating that unless *Kamijast Patrak* is prepared in respect of survey No.138/3, he cannot fix the boundaries. The trial Court, therefore, has rejected the said application filed by the petitioner. Hence, the instant Revision Application.

7] The submission of learned counsel for the petitioner is that when the TILR was specifically directed to fix the boundaries, he cannot say that he is not in a position to do so, as he has to prepare *Kamijast Patrak* and thereafter only he can fix the boundaries of these three plots. According to him, the impugned order passed by the trial Court, rejecting petitioner's application, needs to be quashed and set aside.

8] Per contra, learned counsel for respondent has supported the said order by submitting that if the TILR cannot do a particular job like preparation of *Kamijast Patrak* of survey No.138/3, he cannot be asked to do the same and hence the trial Court has rightly rejected the petitioner's application.

9] Thus a very short controversy involved is whether the TILR can be directed to fix the boundaries, when admittedly the *Kamijast Patrak* of survey No.138/3 has not been prepared as per lay out map, in City Survey Office. As per say of TILR, the lay out map of

the measurement of the suit plots has not been prepared in the City Survey Office, hence the boundaries of plot Nos.12, 17 and 18 could not be fixed.

10] In my considered opinion, if it is the job of the City Survey Office to prepare *Kamijast patrak* of survey No.138/3, then it was for the TILR to do the said job. It is not his case that the said job was to be done by some other office and not by his office. When as per order passed by this Court, he was specifically directed to fix the boundaries, he should have done that and not filed the report simplicitor, without executing the order passed by this Court. The trial Court, therefore, should have allowed the petitioner's application, instead of rejecting the same.

11] Hence the Writ Petition is allowed.

12] The impugned order passed by the trial Court is set aside and the application filed by the petitioner before the trial Court at Exh.113 is hereby allowed. The TILR is directed to fix the boundaries as per earlier order and file fresh report showing the construction made on the respective plots.

[DR.SHALINI PHANSALKAR-JOSHI, J.]