

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10887 OF 2019

PANDURANG DAGADU MAGAR
VERSUS
THE COLLECTOR OSMANABAD AND OTHERS

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Advocate for Petitioners : Smt. Kakde Madhuri
h/f Shri Mate A.R.
AGP for Respondents 1 to 4 : Shri Bhagat N.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 31, 2019

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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the order dated 7.12.2018, passed by the trial Court, by which, his application Exhibit 33 seeking appointment of a Court Commissioner in Special Civil Suit No.9 of 2017, has been rejected.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order. My attention is drawn to the 12 grounds formulated in the memo of the petition.

3. I find from Exhibit 33 that the petitioner seeks appointment of an Advocate as a Court Commissioner for inspecting the suit property and to find out whether the stone crusher kicks up clouds of dust and is causing a nuisance to the petitioner. The suit is of 2017 and the

application has been filed on 23.4.2018.

4. This Court has held consistently that a Court Commissioner should not be appointed before the recording of oral evidence is concluded. Some of the orders passed by this Court are as under:-

(1) *Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar* [2011 (6) Mh.L.J. 334 = 212 (2) Bom. C.R. 790],

(2) *Nalubai Shinde and others Vs. Gopinath Shinde* [2011(2) Mh.L.J.991],

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

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

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

(6) *Dipak Laxman Gadekar and anr. Vs. Trimbak Ravji Shirsath*, Writ Petition No. 11593/2015 (Aurangabad Bench), decided on 23/08/2017,

(7) *Mahadeo s/o Vaijanath Bembalge Vs. Chandrakala w/o Ramesh Athane*, Writ Petition No. 832/2018 (Aurangabad Bench), decided on 04/06/2018,

(8) *Dhondiram Nivrutti Pawar through L.Rs. Vs. Laxman Khashaba Pawar and others*, Writ Petition No. 1196/2017, (Bombay Bench), decided on 23/01/2018,

(9) *Sanjay Balasaheb Khandare Vs. Vivek Surinder Mahajan and another*, Writ Petition No. 4958/2018, (Aurangabad Bench), decided on 29/01/2018.

(10) Bhika Mahadu Katkar and another Vs. Arjun Bhimraj Ghode, WP No.1890/2019 (Aurangabad Bench) decided on 09/07/2019.

(11) Sitaram Suklal Patil and another Vs. Vasudeo Suklal Patil, WP No.9626/2016 (Aurangabad Bench), decided on 31/07/2017.

5. In view of the above, this petition being devoid of merit is, therefore, dismissed. Nevertheless, after the recording of oral evidence is concluded in the matter, if any litigant files an application for seeking appointment of a Court Commissioner, the trial Court would consider the same on its own merits and without being influenced by the impugned order.

(RAVINDRA V. GHUGE, J.)

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