

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2868 OF 2018

SURYABHAN RANGNATH PATOLE
VERSUS
AHMEDNAGAR MUNICIPAL CORPORATION

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Advocate for Petitioner : Shri Kothari Pratik P
AGP for Respondent 1 : Shri Munde K.D.
Advocate for Respondent 2 : Shri Bhosle M.K. h/f Shri Badakh V.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 25, 2019

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PER COURT :-

1. When this matter was heard on 21.3.2018, I had passed the following order:-

"1] The petitioner/original plaintiff is aggrieved by the order dated 09/02/2018 passed by the Trial Court in Regular Civil Suit No. 201/2017, by which application Exhibit 28 filed by defendant No. 2 seeking appointment of a Court Commissioner, has been allowed.

2] I have considered the submissions of the learned advocate for the petitioner.

3] This Court has laid down the law in a series of orders that a Court Commissioner should be appointed after recording of oral evidence. Appointing of a Court Commissioner before commencing the recording of oral evidence, would amount to collecting of evidence.

4] *Issue notice to the respondents, returnable on 27/04/2018.*

5] *Learned AGP waives service for respondent No.1.*

6] *Until the returnable date in this matter, the impugned order dated 09/02/2018 shall stand stayed.*

7] *The Trial Court would be at liberty to proceed to frame issues in the matter.*

8] *Copies of the petition paper book shall be supplied for issuance of notice to respondents on or before 02/04/2018, failing which, this petition shall stand dismissed without reference to the Court on 03/04/2018."*

2. It is informed that the suit is at the stage of recording of oral evidence of the second defendant. As has been observed in the order dated 21.3.2018, that a Court Commissioner should normally be appointed after the recording of oral evidence is concluded, following are some of the orders consistently passed by the Courts:-

(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 and

(6) Kalyan Santram Kawade and others Vs. Khanderao @ Khandu Ganpati Kawade - Writ Petition No.3600 of 2014, dated 20.8.2014.

3. In view of the above, this petition is allowed. The impugned order dated 9.2.2018 is quashed and set aside and application Exhibit 28 stands rejected. Needless to state, after the recording of oral evidence before the trial Court is concluded, the litigating sides would be at liberty to prefer an application for seeking appointment of the Court Commissioner and the trial Court would consider the said application on it's merits.

(RAVINDRA V. GHUGE, J.)

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