

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4647 OF 2019

KALINATH SHIVYOGI DHANGE
VERSUS
THE DEPUTY SUPERINTENDENT OF LAND RECORD OMERGA AND
OTHERS

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Advocate for the Petitioner : Shri Shinde Abasaheb D.

AGP for Respondent 1 : Shri S.R.Yadav

Advocate for Respondent 2 : Shri A.P.Yenegure

Advocate for Respondent 3 : Shri Santosh N. Patne

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th June, 2019

Per Court:

1 I have heard the learned advocate for the petitioner, the learned AGP on behalf of respondent no.1 and the learned advocates on behalf of respondent nos.2 and 3. Respondent no.4 has not appeared despite service of court notice.

2 After considering the submissions of the learned advocates for the respective sides and upon perusing the petition paper book, I find this case to be an example of a government servant putting forth a lame excuse for denying to carryout the measurement of the suit property, though the Trial Court has directed to measure the same.

3 The petitioner/ original plaintiff had moved an application

exhibit 55 invoking Order 26 Rule 9 r/w Section 75 of the Code of Civil Procedure, seeking appointment of the Taluka Inspector of Land Records (TILR) as a court commissioner for carrying out the measurement of the suit property. The documents pertaining to the suit house are of 1295 Hijri, said to be about 150 years old. The length and width of the house are mentioned as 40 hands East-West and 45 hands South-North. It was the contention of the petitioner that presently, the length and width of the house is measured in feet, inches and centimeters.

4 After hearing the litigating sides, the Trial Court has passed the following order on exhibit 55 on 06.02.2019 :-

- "1. Dy. Superintendent, Taluka Inspector, Land Records, Omerga, Tal.Omerga District Osmanabad is hereby appointed as Court Commissioner for making a local investigation.
2. The court commissioner is hereby directed to do measurement of the suit house i.e. house No.1123 situated at village Murum, Tal.Omerga, Dist. Osmanabad. He is further directed to prepare a map of such measurement, clearly identifying boundary marks of above suit house and also encroachment, if any, on suit house.
3. Before making the local investigation as directed above, the court commissioner is directed to give notice of date and time of such local investigation to all the parties concerned.
4. The parties to the suit are directed to appear before the court commissioner for the above purpose.
5. The court commissioner is directed to submit its report along with all relevant papers in this court within 10 days from the date of receipt of this Writ of Commission.
6. The plaintiff is directed to deposit most urgent fees of measurement in the office of Dy. Superintendent, Land

Records, Omerga, as per rules, immediately, so that measurement work should be done within the time frame as directed above, as the suit is time bound by the Hon'ble High Court.

7. *Plaintiff is further directed to supply copies of pleadings, abstracts and other papers necessary for the use of the court commissioner.
Issue Writ of Commission accordingly."*

5 The petitioner/ plaintiff filed the application exhibit 76 praying for directions from the Trial Court to the TILR or to respondent no.1/ Deputy Superintendent of Land Records to initiate steps for carrying out the measurement. An explanation was called from respondent no.1 by the court. He submitted his explanation on 21.02.2019 stating that as no city survey was conducted, there is no city survey number available to the house property and the record does not indicate such city survey number.

6 The petitioner, therefore, moved an application exhibit 81 seeking specific directions from the Trial Court to the TILR. Vide the impugned order dated 11.03.2019, the Trial Court has rejected the application exhibit 81 by giving reasons in paragraphs 6, 7 and 8 as under :-

- "6. *Already this court had issued Writ of Commission to the court commissioner as per order on Exh.55. However the court commissioner shown its inability to make measurement of the suit property in view of its above reports. It is not disputed that the office of Dy. Superintendent, Land Record is an authentic office of measurement of the lands and it being a government office. Therefore, when the court commissioner expressed*

inability for the measurement work, therefore it would not be proper to re-direct it or to compel it to measure the suit property anyhow without having any concerned record with it as alleged in the above reports. Apart from this, when the court had clearly issued writ of commission previously, therefore, there is no reason or purpose to re-pass same type of order once again.

7. *During the arguments learned counsel for the plaintiff Mr.Rajeshwarkar submitted that by inserting nagar parishad house property number and length and width, measurement is possible, to which learned court commissioner shown its inability to do so.*
8. *Thus, in light of above discussion it is clear that no purpose would be served to re-direct the court commissioner to measure the suit property. There is no merit in this application. Hence this application is liable to be rejected."*

7 The petitioner then moved an application exhibit 84 stating that he would deposit money in the bank without relying upon the online payment system and also submitted the details about the adjacent land holders with a request that the said measurement of the suit property be conducted by adopting a different method so as to ensure that the order of the Trial Court is implemented. The Trial Court has then passed the order dated 16.03.2019 concluding that the TILR has expressed his inability for conducting the measurement work and therefore, there is no purpose in compelling the TILR to measure the house property.

8 The petitioner then filed an application exhibit 90 again requesting the Trial Court to direct the TILR to take assistance of the adjoining land owners and conduct the measurement. The defendants

opposed the said application by contending that valuable time of the court is being wasted. The Trial Court noted that the plaintiff was willing to submit the register of the Municipal Council and all such documents, which were available with him so as to measure the suit land and discover the encroachment, if any. The Trial Court has passed an order on 19.03.2019 rejecting application exhibit 90 on the ground that precious time of the court is being wasted. The High Court has granted a time frame and hence, the application deserves to be rejected.

9 The learned advocate for the petitioner submits that he has revenue record available, which would indicate the dimensions of the house property. The record of the adjoining land owners can also be considered by the TILR. The TILR can also take assistance of respondent no.1 so as to peruse the revenue records of the municipal council.

10 The learned advocate for the petitioner has relied upon the judgment of the Honourable Supreme Court in the matter of ***Commissioner, Karnataka Housing Board vs. C.Muddaiah, AIR 2007 SC 3100***, in which, the Honourable Supreme Court has observed in paragraphs 31 and 32 as under :-

"31. *We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy*

available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

32. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where *ex facie* injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the

Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected."

11 I am of the view that the revenue authorities cannot declare themselves to be helpless and try to project a picture that the impugned order cannot be implemented. If the town Murum is in existence on land, it is beyond comprehension that there is no record of the dimensions of the houses of the residents of the said town Murum when the Municipal Council collects taxes from them as per the exact length and width of the house properties. Without a record, a town or village cannot exist on earth.

12 In view of the above, this Writ Petition is allowed. The impugned orders dated 11.03.2019, 16.03.2019 and 19.03.2019 are quashed and set aside. The applications exhibits 81, 84 and 90 are disposed off with the following directions :-

- (a) Respondent no.1/ Deputy Superintendent of Land Records, Omarga is directed to receive all such documents as the petitioner would submit with regard to the municipal record

of the suit property, on 01.07.2019 at 11:00 am.

- (b) Respondent nos.2 and 3 would also submit their revenue records and all such documents pertaining to their own house properties and lands, which they possess, on the same date and time as above, before respondent no.1.
- (c) Respondent no.1/ authority would take assistance of the Municipal Council, Murum with reference to the documents submitted by the petitioner and thereafter, would devise a method of measuring the suit house of the petitioner, in any manner as is possible, within the framework of law. This exercise shall be completed on or before 14.08.2019.
- (d) Respondent no.1 would then prepare the documentation report in compliance of the above directions in deference to the order of the Trial Court dated 06.02.2019 below exhibit 55, which is reproduced above, in two sets and shall submit one set in a sealed envelope to the Trial Court and one set to the Registrar (Judicial) of this Court, Bench at Aurangabad, on or before 26.08.2019.
- (e) The learned Registrar (Judicial) of this Court shall place the papers before this Court on 30.08.2019.
- (f) The learned AGP is requested to communicate this order to the Chief Officer, Municipal Council, Murum, Taluka Omarga,

District Osmanabad, who has chosen to remain absent in this proceeding. The Municipal Council, Murum shall render the fullest cooperation to ensure compliance of the above directions.

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(RAVINDRA V. GHUGE, J.)