

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**907 WRIT PETITION NO.9018 OF 2019**

SHAIKH RAFIK SHAIKH CHAND AND OTHERS  
VERSUS  
MUNICIPAL COUNCIL JALNA THROUGH CHIEF OFFICER AND ANOTHER

...  
Advocate for Petitioners : Mrs. Ansari A.N.

...  
CORAM : **RAVINDRA V. GHUGE, J.**

Date: July 23, 2019

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**PER COURT :-**

1 This matter was heard for some time.

2 The learned Advocate for the petitioners submits, on instructions that, the petitioners desire to withdraw the petition with liberty to file a fresh application for appointment of a Court Commissioner.

3 The petitioners have already filed Exhibit 25 and Exhibit 27, which are the applications, seeking appointment of a Court Commissioner in RCS No.81/2019. Both are rejected. This Court has crystallized the law that the Court Commissioner cannot be appointed at a premature stage and can be appointed after the recording of evidence is concluded in the Suit. Some of such orders 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 Rajji 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.

4 In view of the above, this petition is disposed off as withdrawn.

5 After the recording of the oral evidence of all the litigating sides in the pending suit is concluded, if any litigant files an application seeking appointment of a Court Commissioner, the Trial Court would consider such application, at that stage, in view of the oral and documentary evidence adduced, without being influenced by the observations made in the two impugned orders.

**(RAVINDRA V. GHUGE, J)**