

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

WRIT PETITION NO.13839 OF 2019

RAOSAHEB DAULAT JADHAV AND OTHERS
VERSUS
THE COLLECTOR AHMEDNAGAR AND OTHERS

...
Advocate for the Petitioners : Shri V.B.Jagtap h/f Shri Wagh Umakant U.
AGP for the Respondents : Shri S.R.Yadav
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th November, 2019

Per Court:

1 The petitioners/ original plaintiffs in RCS No.585/2017 are aggrieved by the order dated 02.07.2019 passed by the Trial Court by which, the application exhibit 29 filed by the petitioners seeking appointment of a court commissioner for conducting a joint measurement of the suit properties, has been rejected.

2 The learned advocate for the petitioners has strenuously criticized the impugned order. He points out from the nine grounds formulated in the memo of the petition that a particular land stands in the name of the plaintiffs as per the 7/12 extract. The State Government has acquired certain portions of the land for construction of the percolation tank in Gat No.12. The said Gat number was subsequently sub-divided

and as such, Gat No.12/1 is recorded in the 7/12 extract as the water tank and Gat nos.12/2 and 12/3 are claimed by the plaintiffs to be in their possession.

3 The grievance of the plaintiffs is that the State claims that the plaintiffs are encroachers. However, the exact details of the encroachment have not been set out. If there is a joint measurement, the area allegedly encroached by the plaintiffs would be visible from the report and map.

4 This Court has consistently held that the court commissioner should not be appointed until the recording of oral evidence is concluded. If any further information is to be elucidated and if the Trial Court finds that the court commissioner would be of assistance, such an appointment can be made keeping in view the evidence recorded. Some of the orders/ judgments delivered by this Court are as under :-

- (a) *Sanjay Namdeo Khandare vs. Sahebrao Kachru Khandare and others, 2001 (2) Mh.L.J. 959.*
- (b) *Kolhapuri Bandu Lakade vs. Yallappa Chinappa Lakade and others, 2011 (3) Mh.L.J. 348.*
- (c) *Syed Mushtaque Ahmad Syed Ismail and others vs. Syed Ashique Ali Khan Haidar Ali, 2012 (1) ALL MR 80 : 2011 (6) Mh.L.J. 334.*
- (d) *Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013).*

- (e) *Chandrakant Kashinath Dike and others vs. Smt. Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.*
- (f) *Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.*
- (g) *Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.*
- (h) *Dipak Laxman Gadekar and another vs. Trimbak Ravji Shirsath, Writ Petition No.11593/2015 (Aurangabad Bench) decided on 23.08.2017.*
- (i) *Dhondiram Nivrutti Pawar through L.Rs. vs. Laxman Khashaba Pawar and others, Writ Petition No.1196/2017 (Principal Seat Bombay) decided on 23.01.2018.*
- (j) *Sanjay Balasaheb Khandare vs. Vivek Surinder Mahajan and another, Writ Petition No.4958/208 (Aurangabad Bench) decided on 29.01.2018.*
- (k) *Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP No.1096/2018 dated 31/01/2018).*
- (l) *Mahadeo Vaijanath Bembalge vs. Chandrakala Ramesh Athane, Writ Petition No.832/2018 (Aurangabad Bench) decided on 04.06.2018.*

- (m) *Baburao Jairam Borade vs. Fakira Tukaram Lanekar, Writ Petition No.1743/2018 decided on 28.08.2018 (Aurangabad Bench).*
- (n) *Sarjerao Nathu Bangar and others vs. Namdeo Keru Bangar and others, Writ Petition No.13441/2019 decided on 07.11.2019 (Aurangabad Bench).*

5 I find from the impugned order that the Trial Court has noted that there is no boundary dispute involved. Naturally, each side will have to prove their averments and the appointment of a court commissioner is not a substitute for recording oral evidence.

6 In view of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

7 Needless to state, after the recording of oral evidence is concluded, if an application for seeking appointment of a court commissioner is preferred by any of the litigating sides, the Trial Court would consider such an application on its own merits and without being influenced by the impugned order.