

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO.96 OF 2014**

- 1] Ashruba Sukdeo Solanke
Age : 25 Years, Occ. Agriculture,
R/o. Nipani Takali,
Taluka Majalgaon, Dist. Beed.
- 2] Bhagwan Sukdeo Solanke
Age : 23 Years, Occ. Agriculture,
R/o. As above
- 3] Narayan Sukdeo Solanke,
Age : 21 Years, Occu. Agriculture,
R/o. As above
- ..PETITIONERS

VERSUS

- 1] Prabhu Ramchandra Rathod,
Age : 50 Years, Occ. Agriculture,
R/o. Vasant Nagar, Nipani Takli,
Tal. Majalgaon, Dist. Beed
- 2] Rajebhau Prabhu Rathod,
Age : 25 Years, Occu. Agriculture,
R/o. As above
- ..RESPONDENTS

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Advocate for Petitioners : Mr. B. S. Kudale
Advocate for Respondent No.2 : Mr. S. J. Salunke

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CORAM :T.V. NALAWADE J.
DATE : 11th FEBRUARY, 2019.

ORDER :-

The petition is filed to challenge the order passed by the learned
3rd Joint Civil Judge, Junior Division, Majalgaon, District Beed below
Exh. No. 57 in Regular Civil Suit No. 4 of 2012.

2. Heard both the sides.
3. The civil suit is filed by the respondents (original plaintiffs) for

removal of the encroachment made on their land bearing land Gut No. 139 allegedly made by the present petitioners(original defendants). It is contention of the respondents/plaintiffs that before filing the suit, they had got measured the land through T.I.L.R.

4. It appears that present petitioners have filed the Written statement of total denial. The Surveyor is already examined and cross-examined. It is contention of the petitioners that after examination and cross-examination of the Surveyor, the petitioners/defendants realized that the land admeasuring 33 R from the land Gut No. 139 was acquired by the Government and that land probably was not considered by the Surveyor at the time of measurement. After that, the present petitioners/defendants requested the Court to frame specific issue with regard to the said acquisition under the aforesaid application. The trial Court has rejected the application by holding that such issue is not relevant to the present matter filed for removal of the encroachment. It can be said that there is no error in the order passed by the learned trial Judge.

5. However, it can be said that during the course of cross-examination of the Surveyor, the counsel of the defendants could have put it to the Surveyor that the land was acquired and it was not considered by the Surveyor if such portion is not shown in the measurement map prepared by the Surveyor. Considering that possibility, this Court holds that opportunity can be given to the

defendants-the present petitioners to apply to trial Court for recalling the Surveyor at their own costs for further cross-examination on the aforesaid point. With these observations and for giving such opportunity, the petition is disposed of in aforesaid terms.

[T.V. NALAWADE]
JUDGE

YSK/