

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4280 OF 2015

Jawahar s/o Shamrao Deshmukh ...Petitioner

Versus

Jalgaon City Municipal Corporation
Through its Commissioner, Jalgaon ...Respondent

...

Mr. L. V. Sangit, Advocate for petitioner

...

CORAM: SUNIL P. DESHMUKH, J.

Date: 16th January, 2019

ORDER :

1. Heard learned counsel for petitioner.
2. Petition has been moved purporting to have been aggrieved by order dated 12th December, 2014, passed by the Ad-hoc District Judge-2, Jalgaon whereunder application Exhibit-20 in regular civil appeal no. 203 of 2014, filed by the petitioner for appointment of court commissioner to verify the position on the spot came to be rejected.

3. It appears that regular civil suit bearing no. 149 of 2003 has been instituted by the petitioner in the court of civil judge, senior division, Jalgaon seeking injunction against the respondent - municipal corporation restraining it from interfering with his possession. The suit had been dismissed.

4. Pending appeal, aforesaid application has been filed since there had been rival claim by respondent that encroachment had already been removed. It is in this situation, according to learned counsel for the petitioner, application Exhibit-20 has been moved to find out true position on suit spot and, thus, request under the said application cannot said to be not proper. He further submits that the appellate court, under impugned order has erroneously observed that the petitioner has not been specific in respect of structure on the spot and had been claiming to be in possession of the suit spot running business of Tea vending thereon. Appellate court has observed that there is no material to support such a claim.

5. It appears that there is no particular dispute about the property being municipal property. It is settled

position that court commissioner cannot be appointed for collection of evidence and it appears in this respect, appellate court has properly considered the matter in impugned order.

6. Having regard to aforesaid and also four years having elapsed after impugned order has been passed, efficacy of writ petition stands watered down.

7. Writ petition is, therefore, not entertained and is rejected.

[SUNIL P. DESHMUKH, J.]