

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

WRIT PETITION NO. 3559 OF 2020

JIJABRAO SHANKAR PATIL AND OTHERS
VERSUS
GRAMPANCHAYAT (WADALI DIGAR) THROUGH IT'S
SARPANCH AND OTHERS

...
Advocate for the Petitioners : Shri S. D. Hiwrekar
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 4th MARCH, 2020
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PER COURT :

1. The Petitioners, original plaintiffs in Regular Civil Suit No. 141/2010, are aggrieved by the order dated 10/06/2019 passed by the Trial Court, vide which, application Exhibit 83 praying for appointment of a court commissioner, has been rejected.

2. I have considered the strenuous submissions of the learned Advocate for the Petitioners.

3. There is no dispute that the recording of oral evidence has not been concluded even today. This Court has consistently held, in the following

orders/judgments, that a court commissioner should normally not be appointed prior to the conclusion of the recording of oral evidence in the matter :-

(1) *Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar* [2011 (6) Mh.L.J. 334 = 2012 (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 Ravji 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.

(10) *Bhika Mahadu Katkar and another Vs. Arjun Bhimraj Ghode*, WP No.1890/2019 (Aurangabad

Bench) decided on 09/07/2019.

(11) Sitaram Suklal Patil and another Vs. Vasudeo Suklal Patil, WP No.9626/2016 (Aurangabad Bench), decided on 31/07/2017.

(12) Sarjerao Nathu Bangar and others Vs. Namdeo Keru Bangar and others, WP No.13441/2019 (Aurangabad Bench), decided on 07/11/2019.

4. Coupled with the above position, the Petitioners had prayed that one Advocate, Member of the Taluka Bar Association, Jamner should be appointed as a court commissioner for inspection of the properties. The Trial Court recorded that the measurement and preparation of a map requires special skill and knowledge, which would not be available with an Advocate.

5. Be that as it may, even if the property was to be inspected, a court commissioner can be appointed if the Trial Court is convinced of its necessity, after the recording of oral evidence is concluded.

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

7. Needless to state, after the recording of oral evidence is concluded, if either of the litigating parties moves an application for appointment of a court commissioner, the Trial Court would consider the same on its own merits.

(RAVINDRA V. GHUGE, J.)

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