

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

WRIT PETITION NO. 8446 OF 2017

Shaikh Layak Ahmed
S/o Shabbir Ahmed
Age- 50 years, Occu-Business,
R/o Osmanpura Galli, Latur

..PETITIONER

VERSUS

- 1] Azam S/o Abdul Khayyum Qureshi
Age 43 yrs, Occu-Business.
- 2] Ekbal S/o Abdul Khayyum Qureshi
Age 45 yrs, Occu-Business.
Both R/o New Bismilla Biryani Hotel
Gunj Golai, Latur.

- 3] Deputy Superintendent,
Land Records, Latur, Dist. Latur

.. RESPONDENTS

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Dr.S.D.Tawshikar, Advocate for the petitioner.
Mr.Sarawade Patil Dattatray D., Advocate for Respondent Nos.1 & 2
Mrs.D.S.Jape, A.G.P for respondent no.3.

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**CORAM : MANGESH S. PATIL, J.
DATE : 17/11/2021**

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned A.G.P. and learned advocate for contesting respondents waive service. At the joint request of the parties, the matter is heard finally at the stage of

admission.

2] The petitioner is the original plaintiff who has filed a suit for possession of encroached portion. The respondent no.1 is the defendant. The petitioner submitted application (Exh.16) under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of a Court Commissioner to carry out measurement of the plots to ascertain the factum of encroachment. By order dated 31/3/2013, the T.I.L.R. Latur was appointed as a Court Commissioner for carrying out the measurement and for preparing a map. The petitioner was directed to pay necessary fees to the Court Commissioner. When the petitioner approached the T.I.L.R. pursuant to the order of the Court he was asked to pay Rs.1,55,000/- as feese. Since according to him, the fees was excessive and exorbitant he addressed complaint cum request to the Settlement Commissioner, Land Records, who is the superior of the T.I.L.R. Having failed to get any relief, he again submitted application (Exh.29) before the trial Court with a prayer to accept the fees and to carry out the measurement as per the application (Exh.21) i.e. at the rate of Rs.1000/- per plot. By order under challenge the trial Court has rejected the application (Exh.29) simultaneously making an observation that on failure of the petitioner to deposit the fees for carrying out the measurement the original order regarding appointment of the Court Commissioner itself stood vacated automatically.

3] The question or dispute in this case seems to be in respect of payment of fees to the Court Commissioner. Apparently there was a dispute as to the rate at which fees was to be paid.

4] It is pointed out by the learned advocate for the petitioner that the

respondent Deputy Superintendent of Land Records in his affidavit in reply is relying upon the Government Circulars dated 6/2/2010 and 26/11/2010 for charging fees of Rs.1,82,000/-. But subsequently pursuant to the direction of this Court in Writ Petition No.10176/2013 dated 15/07/2014 in the matter of Ashok Sarjerao Deshmukh V/s The State of Maharashtra and others these circulars were modified. He has also placed on record the communication dated 3/2/2015 (Exh-R-1) by the Settlement Commissioner cum Director of Land Records, Maharashtra State specifically cancelling the earlier modification in Circular dated 6/2/2010 effected by the subsequent circular dated 1/12/2010 thereby excluding from assessment of fees the properties situated beyond the municipal limits. The affidavit in reply filed by the Deputy Superintendent of Land Records does not address to such subsequent events.

5] Once the trial Court had allowed the application (Exh.16) and had appointed the T.I.L.R. to carry out measurement, since there was no condition as such, directing that the order would stand vacated automatically one cannot comprehend as to how while passing the impugned order the learned Judge has concluded that the original order stood vacated automatically. Even if the petitioner was unable to pay the fees, the order not being an conditional one, it could not have been said that it stood automatically vacated. The matter had remained at the same stage throughout.

6] It is under these circumstances, in view of the subsequent event as discussed hereinabove and since enormous time has already been lost since the order was passed on the application (Exh.16) it would be appropriate that the impugned order is quashed and set aside and the petitioner is extended an opportunity once again to approach the T.I.L.R. with a request to accept the

fees by pointing out all the above mentioned circumstances. Needless to state that if he deposits the necessary fees as demanded by the T.I.L.R. the latter would be obliged to carry out the commission as per the order of the trial Court on the application (Exh.16).

7] With such directions the Writ Petition is allowed. The Rule is made absolute. The petitioner is allowed to withdraw the money deposited in this Court pursuant to the earlier order.

[MANGESH S. PATIL, J.]

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