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

11 WRIT PETITION NO.13455 OF 2021

**POPOSED NALANDA HOUSING SOCIETY, AURANGABAD,
THROUGH IT'S PROMOTER MAHENDRA VITTHALRAO
THOMBRE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr A. P. Bhandari, Advocate for petitioner;
Mr S. R. Yadav, A.G.P. for respondent Nos.1 to 4;
Mr S. S. Thombre, Advocate for respondent No.5;
Mr S. S. Deve, Advocate for respondent No.6

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 20th December, 2021

PER COURT:

1. The petitioner has put forth prayer clauses (B), (C), (D) and (E), which read as under :-

“B) By a Writ of Mandamus or any other suitable writ, order or direction, the respondents no. 2 to 6 may kindly be directed to acquired the land Survey no. 34/2 (Admeasuring 6 Acres) of Village Bhavsingpura, Tal. & Dist. Aurangabad owned by the Petitioner by following due process of law.

C) By a Writ of Mandamus or any other suitable writ, order or direction, the respondents no. 2 to 6 may kindly be directed to take steps as per communication dated 20.04.2018 issued by Respondent no. 1 (Exhibit O),

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12.07.2019 (Exhibit R) and Directions dated 11.01.2021 (Exhibit S) and handover possession of land Survey no. 34/2 (Admeasuring 6 Acres) of Village Bhavsingpura, Tal. & Dist. Aurangabad to the Petitioner.

D) By a Writ of Mandamus or any other suitable writ, order or direction, Respondent No. 4 be directed to measure the land Survey no. 34/2 (Admeasuring 6 Acres) situated at Bhavsingpura, Aurangabad (writ property).

E) This Hon'ble court may be pleased to issue writ of mandamus or any other appropriate writ, order or directions in the nature of writ thereby restrain the Respondent No. 5 and 6 from objecting and interfering in the measurement the land Survey no. 34/2 (Admeasuring 6 Acres) situated at Bhavsingpura, Aurangabad (writ property) to be carried out by Respondent No.4 and further direct to provide necessary assistance for the said measurement."

2. On 14/12/2021, we had passed the following order :-

"1. Issue notice to the respondents returnable on 20.12.2021. The learned AGP waives service of notice on behalf of respondent Nos. 1 to 4. Shri. Thombre, the learned advocate, waives service of notice on behalf of respondent No.5. The learned ASGI waives service of notice on behalf of respondent No.6.

2. Since a short issue is involved pertaining to the measurement of the land, we re listing this matter in the urgent admissions category on 20.12.2021."

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3. We have heard the learned Counsel for the respective sides. Shri. Thombre, the learned Advocate representing respondent No.5 and Shri. Deve, the learned Advocate representing respondent No.6 seek time to file an affidavit-in-reply.

4. Having realized that this matter hardly impinges the rights of respondent Nos.5 and 6, we feel that this petition need not be kept pending for the reasons recorded hereinafter.

5. The petitioner-Society claims to be the owner and possessor of six acres of the land in Survey No.34, specifically identified as Survey No.34/2. There are four sub-divisions in Survey No.34, which are now allotted different sub-survey numbers. However, the change in the number would not cause any alteration or change in the land at issue. The petitioner has deposited Rs.16,500/- as fees with the TILR and seeks measurement of Survey No.34/2. To avoid any confusion, the petitioner is willing to deposit additional fees so as to get the entire Survey, inclusive of four sub-divisions measured.

6. Shri. Thombre and Shri. Deve together have opposed this petition vehemently contending that the entire land of 724 acres in the possession of respondent No.5 – University, out of which

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some portion is leased out to respondent No.6 – Sports Authority of India (SAI), in all admeasuring about 724 acres, should be measured at the cost and expenses of the petitioner.

7. The petitioner had initially preferred Regular Civil Suit No.82/2010 putting forth the following prayers :-

- “(a) The perpetual injunction to restrain the defendant No.1;*
- (I) From interfering and obstructing the lawful and peaceful possession of the plaintiffs over the suit properties;*
- (II) From making obstacles in the development of the suit property by the plaintiffs.*
- (III) From closing the entry gate fixed at the west side of the suit properties.*
- (b) Mandatory injunction directing defendant No. 1 to remove the compound wall.”*

8. The said suit, along with the counter claim of respondent No.6 – SAI, has been dismissed. A Regular Civil Appeal was filed by the petitioner, which was unconditionally withdrawn. In these circumstances, Shri. Thombre submits that this petition should be dismissed as the petitioner has no cause to approach this Court.

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9. We called upon the learned A.G.P. to state, as to what would be the steps to be taken by the Revenue Authorities if the land owner deposits the requisite fees for seeking measurement. He submits that, in the normal course of business and as per the procedure, the authorities would measure the said land and would submit a report. This is subject to the boundary marks to be shown by the applicant so as to enable the TILR to focus on the portion of the land, ownership of which is claimed by the petitioner and proceed to measure the land. If certain deficiencies come to the notice of the TILR, his report and sketch would speak louder than words.

10. We find that respondent Nos.5 and 6 are mixing up the issue as regards Regular Civil Suit No.182/2010 with reference to prayer Clause (B) and (D) put forth by the petitioner. In fact, the Trial Court has recorded in paragraph 10 of its judgment dated 02/04/2012 that, *“In fact title of the plaintiffs over the suit properties is not in serious dispute, indirectly the defendants admit that the plaintiffs Nos. 1 and 2 own certain land out of Gat Nos.34/2 and 34/4.”* Subsequently, the Trial Court proceeded to dismiss the suit for the following reasons :

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“The Plaint as well as the counter claim of defendant No.1 suffers by the provisions of order VII Rule 3 of the CPC. In such fact situation, the plaint and counter claim are required to be dismissed. As there is no mention of property in the counter claim finding as to issue No.3 which pertains to the title of the defendant No.1 is required to be answered as does not survive and all other issues in the negative.”

11. Even in paragraph 12, the Trial Court has recorded that sufficient evidence was not placed before it to identify the property and there was an absence of measurement record and evidence of Surveyor of the map.

12. The learned Advocate for the petitioner submits that he has virtually been made remediless. His suit is dismissed as there was no measurement. When he seeks measurement, the University insists that 724 acres should be measured which is their land excluding the six acres of the petitioner.

13. In view of the above, we find that neither the University - respondent No.5 nor SAI - respondent No.6, would have any role to play insofar as measurement of Survey No.34 is concerned. Eventually, after the measurement is complete, if somebody or the University or SAI has encroached upon the land of the petitioner,

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it would have to approach the appropriate Civil Court for seeking redressal of their grievance.

14. As such, this petition is allowed in terms of prayer clause (D).

15. If there is any shortfall in the payment of measurement charges, the petitioner shall deposit the said charges within two weeks from today.

16. Needless to state, the entire Survey No.34 can be measured by the concerned authorities, subject to the petitioner depositing the requisite/deficit fees, within two weeks.

17. Insofar as the suit is concerned, all the contentions of all the litigating parties, are kept open.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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