

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.628 OF 2021

Nashik Municipal Corporation & Anr.

... Petitioners

Vs.

Prashant Pannalalji Karnawat & Ors.

... Respondents

**WITH
INTERIM APPLICATION (ST) NO.2753 OF 2021
IN
WRIT PETITION NO.628 OF 2021**

Mr.M.L. Patil for the Petitioners.

Mr. Mangesh Bhandari i/by Pranjali Bhandari for Respondent
No.1.

Mr.P.G. Sawant, AGP for the State.

**CORAM : S.J. KATHAWALLA &
VINAY JOSHI, JJ.**

DATE : 18TH FEBRUARY, 2021

P.C. :

1. By the above Writ Petition, the Petitioner No. 1 -
Nashik Municipal Corporation has prayed for the following
reliefs:-

“a) Rule be issued and record and proceedings
be called for.

- b) A writ of mandamus or any other writ and/or any other order in the nature of writ under Art 226 of India be issued to quash and set aside the order dated 08.12.2020 passed by the Respondent No.4 below Exh 19 in Land Reference No.676 of 2019 partly to the extent it appoints the Commissioner by name and an independent Court Commissioner be appointed to record the evidence of Petitioners.
- c) Pending the hearing and final disposal of the Writ Petition all further proceedings in Land Reference No.676 of 2019 pending before the Respondent No.4 be stayed.
- d) Such other and further reliefs be granted in favour of the Applicants.”

2. Perused the Order dated 28th January, 2021, passed by the Presiding Officer, Maharashtra Land Acquisition Authority, Nagpur (**‘Competent Authority’**), wherein the Presiding Officer has after setting out the past conduct of the parties in the matter, recorded as under :-

“Considering the situation and behavior of the parties I think it proper that the recording of evidence of N.A. No.1 & 2 shall be

conducted before this authority. Hence, non applicant No.1 & 2 are directed to file the affidavit in lieu of examination in chief before this authority within 3 weeks. Copy of the affidavit shall be served to the applicant in advance so that he shall be able to cross-examine the witness on the appointed day.”

3. The Learned Advocate appearing for the Nashik Municipal Corporation states that there are several matters before the Competent Authority wherein Nashik Municipal Corporation is a party and though in all the other matters the Competent Authority has appointed a Court Commissioner to record the evidence, it is only in the present matter that the Competent Authority has directed that the evidence shall be led before it, and not the Commissioner.

4. The Competent Authority has, as set out above, given reasons as to why according to it in the present matter the evidence should be led before it. A party cannot decide as to whether evidence should be led in a Court / before the competent authority by appointing a Commissioner. The

discretion is entirely with the court or the competent authority, as the case may be.

5. Though Nashik Municipal Corporation cannot be heard to say that it is not possible for them to travel to Nagpur from Nashik, we have inquired whether the Competent Authority has video conference facility and whether they can record the evidence through video conferencing. The response that we have received is in the affirmative. The Learned Advocate appearing for the Nashik Municipal Corporation has also taken instructions and has stated that the Nagpur Municipal Corporation is willing to produce all their four witnesses through video conferencing and the Advocate for the Respondent No.1 has agreed to attend their office and cross-examine the witnesses. He has already forwarded a copy of the Affidavit of Evidence of the first witness along with the compilation of documents, to the Advocate for the Respondent No.1. The admissions and denials and marking of documents shall be before the Competent Authority through video conferencing on 25/02/2021. The cross-examination of the first witness shall thereafter commence on and from 02/03/2021 through video

conferencing. All the directions required in future shall be given by the Competent Authority.

6. The matter shall be disposed of by the Competent Authority as expeditiously as possible.

7. The above Writ Petition, as well as the Interim Application stands disposed of.

(VINAY JOSHI, J.)

(S.J. KATHAWALLA, J.)