

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.463 OF 2020**

Shankar S. Akhade (Expired) and Ors.

... Petitioners.

V/s.

Jashwant P. Thacker (Deceased) and Ors.

... Respondents

Mr.Sachin Chavan a/w. Mr.Swapnil Mhatre, Advocates for Petitioners.

Mr.P.V. Shah, Advocate for Respondent No.6.

CORAM : A.S. GADKARI, J.

DATE : 24th August, 2021.

PC. :

1. Heard Mr. Chavan, learned counsel for Petitioners and Mr. Shah, learned counsel for Respondent No.6. Perused record.

2. The record clearly indicates that, the Assistant Superintendent-Cum-City Survey Officer, attached to the Office of Old Custom House, Fort, Mumbai has erred in reading Order dated 30th January 2018 passed below Exh.54 in Execution Application No.264 of 2010 and has not complied with, in its proper letter and spirit. The learned Judge of the Trial Court in para No.7 of the impugned Order dated 20th October, 2018, has observed that, the concerned Government Officer has not mentioned that, he visited the suit property along with plaint and the map annexed thereto and also has not

mentioned in its report dated 16th May, 2018 the exact location of the suit premises as per the plaint and the plan annexed thereto. That, the said things are missing in the report from the Court Commissioner dated 16th May, 2018.

3. As noted earlier, the said Government Officer/Court Commissioner was appointed with a specific direction by the Trial Court as mentioned in the operative part of para No.1 of Order dated 30th January, 2018. Therefore it was expected from the said Officer to visit the suit premises along with the plaint and the map annexed thereto in order to demarcate the exact location of green shaded portion as mentioned in the plaint map on the site. For want of specific compliance of the said Order, it appears to this Court that, the Trial Court may perhaps not able to get proper assistance of the said report submitted by the Court Commissioner.

4. In view thereof, the impugned Order dated 20th October, 2018 passed below Exh.61 in Execution Application No.264 of 2010 is hereby set aside and the Application filed by the Petitioners below Exh.61 is allowed.

5. The Assistant Superintendent-Cum-City Survey Officer, attached to the Office of Old Custom House, Fort, Mumbai is hereby directed to comply with the Order dated 30th January, 2018 passed below Exh.54 in its proper letter and spirit without, keeping any ambiguity while submitting its report afresh before the Trial Court.

6. As noted above, the Application filed by the Petitioners below

Exh.61 is hereby allowed, the Petitioners will bear the cost of fresh survey been conducted by the concerned Officer. The concerned Officer is directed to submit its report within a period of four weeks from the date of receipt of necessary legal charges for conducting survey from the Petitioners. Petitioners are directed to deposit the necessary charges along with copy of the present Order in the Office of the concerned Officer within a period of three weeks from today.

7. Petition is allowed in the aforesaid terms.
8. All the concerned to act on the basis of the authenticated copy of this Order.

[A.S. GADKARI, J.]

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