

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1125/2019.

Nitin Keshaorao Darvekar and others. Petitioners.

-VERSUS-

1.Mamta Cooperative Housing Society,
Nagpur and others. Respondents.

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Shri N.R. Kanungo, Advocate for the Petitioner.
Ms. N. Singh, Advocate for the Respondent No.1.
Shri S.D. Khati, Advocate for the Respondent No.2.
Ms. K. Deshpande, Assistant Government Pleader for the Respondent
Nos. 3 to 8.

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**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATE : 22 FEBRUARY 2021.

P.C.

Heard the learned Counsel for the Parties.

2. The Petitioners who are members of the Respondent No.1 Cooperative Housing Society have filed this petition for a direction to the Sub Inspector of Land Survey to carry out measurement of the lands of the Respondent Nos. 1 and 2.

3. The measurement of lands of the Respondent Nos. 1 and 2 cannot be a substantive relief, therefore, we had called upon the Petitioners to point out as to whether the measurement is being carried out is in aid of resolution of some dispute which is pending. The learned Counsel for the Petitioners informs that the dispute is in respect of an encroachment which is pending between the Respondent No.1- Cooperative Society of which Petitioners are members and the Respondent No.2. In a suit which is filed for encroachment, a direction for measurement of the lands to ascertain the encroachment can be asked for and the Civil Court has necessary powers to direct measurements. Writ jurisdiction under Article 226 of the Constitution of India cannot be exercised merely to carry out the measurement of the land unless it is in aid of a substantive dispute.

4. Since the substantive dispute is pending before the Civil Court, it is open for the Petitioners to seek the remedy before the Civil Court. In case there is dispute between the Petitioners and the Respondent No.1 -Cooperative Society, the Petitioners have a remedy to approach the forum under the Maharashtra Cooperative Societies Act. In the circumstances, leaving all the contention of the Petitioners open to be agitated in the appropriate Forum, we dispose of the Writ Petition.

(ANIL S. KILOR, J)

(NITIN JAMDAR, J)

Rgd

**Rakesh
Dhuriya**

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by Rakesh
Dhuriya
Date: 2021.02.24
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