

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

WRIT PETITION NO.3319 OF 2022

**RAJU SHAFI KHATIK AND OTHERS
VERSUS
MUNICIPAL COUNCIL THROUGH ITS CHIEF OFFICER AND OTHERS**

...
Advocate for Petitioners : Mr. L. V. Sangit h/f Mrs. M. L. Sangit

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 08TH MARCH, 2022

PER COURT :

1. The petitioners are aggrieved by rejection of their application filed under Order 26 Rule 9 and Order 39 Rule 7 of the Code of Civil Procedure, for appointment of Court Commissioner to inspect the suit property i.e. C. S. No. 5044/1, plot Nos. 8A and 8B.

2. The learned advocate for petitioners vehemently urged that since the very existence of plot Nos. 8A and 8B is disputed by the Municipal Council, it is necessary to appoint Court Commissioner to carry out the local inspection and measurement and to file a map on Court's record, which will enable the trial Court to effectively decide the matter.

3. Perusal of the record shows that the application is filed at the preliminary stage. The application Exhibit-5 is yet to be decided, the

parties are yet to lead evidence to establish *prima facie* case in their favour. In that view of the matter, this Court is of the considered view that the trial Court was justified in rejecting the application filed by the petitioners at this preliminary stage.

4. If, during the course of trial after leading the evidence, the petitioners file application for appointment of Court Commissioner to carry out local inspection and measurement and to prepare map, the same shall be considered on merits by the trial Court.

5. It is made clear that observations in this order shall not influence the learned trial Judge while deciding the application, if any, filed by the petitioners. Writ petition is disposed off in the above terms.

(NITIN B. SURYAWANSHI, J.)