

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

WRIT PETITION NO.3880 OF 2022

**KIRAN SAMPAT LOHAR
VERSUS
SOPAN GOVIND WARPE AND OTHERS**

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Advocate for Petitioner : Mr. Abasaheb D. Shinde
AGP for Respondents – State : Mr. S. B. Pulkundwar
Advocate for Respondent No.3 : Mr. S. W. Munde

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 28TH MARCH, 2022

PER COURT :

1. The petitioner is aggrieved by order passed by the learned Civil Judge Senior Division, Rahata, below Exhibit-54, in Regular Civil Suit No.406/2019, thereby appointing Court Commissioner for measurement of the suit property as well as property of the petitioner. The petitioner contends that the suit is filed by respondent No.1 herein for simpliciter declaration that, plaintiff (respondent No.1) is owner of the land Gut No.32/2, admeasuring 23 R. Second prayer in the suit is that the amount deposited by defendant No.2 in respect of the compensation of the suit property, should be paid to nobody else except the plaintiff (respondent No.1 herein). The suit is at the stage of evidence and one witness of the plaintiff is examined. At this stage the application Exhibit-54 came to be filed seeking appointment of Taluka

Inspector of Land Records for measurement of sub-share/sub-division of land Gut No.32, which is allowed by the trial Court.

2. Heard the learned advocate for petitioner at length. According to him, since the suit is not for removal of encroachment, there is no occasion for the trial Court to appoint the Court Commissioner. By placing reliance on the map prepared by the pedestrian surveyor, he submits that the position is clear that there is a road passing between the land of petitioner and the land of respondent No.1. In that view of the matter also, the trial Court was not justified in appointing the Court Commissioner. In support of his contentions he relied on *Arjun Rambhau Dhankude and Others Vs. Bhanudas Ramchandra Murkute and Others, 2020 (2) Mh.L.J. 145*.

3. Admittedly, the suit is filed seeking declaration of ownership of land Gut No.32/2, admeasuring 23 R. Prayer to disburse the compensation amount to nobody else except the plaintiff is also made in the suit. There appears dispute between the petitioner and respondent No.1 in respect of the suit property.

4. The trial Court has held that the dispute between plaintiff and defendant is about the compensation. Therefore, how much portion of the land of plaintiff and defendant is acquired needs to be brought on

record and thereafter only how much area is remaining in their respective possession can be brought before the Court. The prayer of the plaintiff in the said application is in consonance with the prayer made in the plaint. By relying on the decision in *Hemraj Gangaram Iname and Others Vs. Suryabhan Bhiva Dhawas, 2014 (4) All.M.R. 815* and *E. Achuthan Nair Vs. P. Narayanan Nair and Another, AIR 1987 SC 2137*, the trial Court came to a conclusion that if there is dispute about the boundaries, it is necessary to appoint the Court Commissioner.

4. The trial Court has further observed that after road widening how much land of the petitioner and defendant is acquired and how much land is remaining is in dispute. So also, the acquired portion is from whose land and the land of plaintiff and defendant comes on which side of the road is also required to be brought on record, so that the trial Court can decide the suit on merits. The trial Court was, therefore, of the view that appointment of Court Commissioner will help in deciding the controversy between the parties.

5. The trial Court has passed a well reasoned order which according to this Court need not be interfered. Since the trial Court has held that appointment of Court Commissioner would help to decide the controversy between the parties, in my opinion the trial Court has

rightly exercised the discretion vested in it.

6. In *Arjun Rambhau Dhankude* (supra), it is held that ‘the fact that in the application for appointment of the Court Commissioner, there was no whisper about encroachment at the hands of the defendants could not have been ignored by the learned Civil Judge’.

7. In the case in hand, taking into consideration the fact that the dispute between the petitioner and respondents is about the acquired portion and entitlement of compensation, the trial Court was justified in appointing the Court Commissioner. No prejudice is likely to be caused to the petitioner if the Court Commissioner is appointed and measurements are carried out. There is no substance in the petition. The writ petition is, therefore, disposed off.

(NITIN B. SURYAWANSHI, J.)