

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

WRIT PETITION NO.10041 OF 2022

Prakash Bajirao Garje & Ors.

... Petitioners

Versus

The State of Maharashtra & Ors.

... Respondents

...

Mr. K. D. Patil Bade, Advocate for the Petitioners

Mr. K. B. Jadhavar, AGP for the Respondents/State

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 3rd October, 2022

PER COURT :-

1. The petitioners/original plaintiffs are aggrieved by the order passed by 2nd Joint Civil Judge, Senior Division, Beed below Exhibit-68 in Regular Civil Suit No.346/2015, thereby rejecting application filed by the petitioners seeking direction to Superintendent of Land Record, Beed to measure the land in terms of the order passed by the Trial Court on 17-02-2017.

2. The plaintiffs/petitioner's application seeking appointment of Court Commissioner was allowed by the Trial Court and Superintendent of Land Record, Beed was appointed as Court Commissioner for inspection and measurement of suit properties and Block No.205, to find out whether there is any encroachment on behalf of the defendants.

3. After passing of the said order, Superintendent of Land Record asked Taluka Inspector of Land Record (TILR) to conduct the measurement. Accordingly, he has conducted measurement and filed a report and map at Exhibits-57 and 58/C.

4. Petitioners challenged the said report contending that, Superintendent of Land Record was directed to measure the land and the land is measured by TILR and report submitted by him is not acceptable to the petitioners. The petitioners therefore prayed for direction to Superintendent of Land Record to carry out the measurement and submit report in terms of the directions issued by the Trial Court in the order dated 17-02-2017.

5. Trial Court has rejected the said application holding that, if the petitioners/plaintiffs do not agree with the report of Court Commissioner, they ought to have examined the Court Commissioner and established the incorrectness of the measurement of land. The Trial Court therefore held that, no case is made out by the petitioners for re-measurement of land.

6. Having heard the learned Advocate for the petitioners and learned Assistant Government Pleader for the respondents/State, this Court is of the opinion that, there is no merit in the challenge raised by the petitioners in the present petition.

7. It is not in dispute that, TILR has filed measurement report and map after carrying out the measurement. If the petitioners are not accepting the same, petitioners are entitled to challenge the report by cross-examining TILR. In case, petitioners succeed to bring on record that report and map submitted by TILR is incorrect, then petitioners can file application for re-measurement through Superintendent of Land Record. Instead of doing this exercise, petitioners sought re-measurement of land, which is not proper in the facts of the present case.

8. In the result, writ petition is dismissed, with liberty to the petitioners to challenge report by cross-examining TILR and in case, petitioners are in a position to establish the incorrectness of report and map, petitioners may apply the Trial Court for appointment of Superintendent of Land Record as Court Commissioner. If such application is filed by petitioners, it shall be considered on its own merits.

[NITIN B. SURYAWANSHI, J.]