

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9044 OF 2018
WITH
INTERIM APPLICATION NO.19783 OF 2022**

Shri Balasaheb Datta Hirukade & Ors. .. Petitioners/Applicants
Versus
The Tahasildar, Shirol & Ors. .. Respondents

Mr.Sudhir V. Sadavarte for the petitioners/applicants.
Mr.V.S.Gokhale, 'B' Panel Counsel for the respondent nos.1 to 6.

**CORAM : R.D. DHANUKA &
S.G. DIGE, JJ.
DATE : 21st November 2022**

P.C.:-

. By this petition filed under Article 226 of the Constitution of India, the petitioners seek an order and a direction against the respondent nos. 1 to 6 to produce all the copies of the acquisition proceedings initiated and completed in respect of the land Old Survey No.311/2-B (New Survey No.70/A-2/1/4) situated at Jaysingpur, Taluka Shirol, District Kolhapur.

2. The petitioners claim to be the owners of the writ property and have filed a Writ Petition bearing No.7521 of 2008 in this Court *inter alia* praying for a writ of mandamus and for a declaration that the act of the respondent nos.1 to 4 is *void ab initio* and for quashing and setting the said act.

3. This Court by an order dated 11th August 2010 observed that the petition raised a question in regards to the title and thus it would be appropriate for the petitioners to file a civil suit for the said purpose as disputed questions of fact are involved. This Court has kept all the questions on the title open.

4. It is not in dispute that pursuant to the said order, the petitioners had filed a civil suit before the Civil Judge, Senior Division, Jaisighpur inter alia praying for a declaration and an injunction. The petitioners have applied for interim reliefs in the said suit. We are informed that the interim reliefs were granted by the Trial Court.

5. Our attention is invited to the pursis filed by the petitioners on 15th March 2012 requesting the Civil Court that the petitioners may be permitted to withdraw the said suit. On the said application, Trial Court passed an order allowing the petitioners to withdraw the said suit.

6. Our attention is invited to the application made by the petitioners under Section 151 of the Code of Civil Procedure, 1908 (CPC) for recalling of the order allowing the petitioners to withdraw the said suit on various grounds. We are informed that the contesting defendants in the said suit had filed an application under Order 39 Rule 1 & 2 and Section 151 of the CPC and came to be rejected.

7. The Trial Court had issued a notice in the said application filed under Section 151 of the CPC. The said application is still pending. In so far as the prayer in this petition is concerned, in our view, the petitioners who claim to be the owners of the writ property have also

asserted their rights in the writ property, will have to prove the claim of title before the Civil Court. In case the application filed by the petitioners under Section 151 of the Code of the Civil Procedure, 1908 is allowed and the suit is restored to file, the petitioners can apply for production of those documents at the time of trial.

8. The question as to whether the petitioners are the owners of the suit property or that the petitioners' land could not have been acquired by the State Government would be the issue in the said suit while deciding the title of the property.

9. If the petitioners seek production of documents which are sought in this petition, the Trial Court to decide the said application on its own merit. We are not inclined to grant any reliefs sought in this petition.

10. Writ petition is accordingly dismissed. In view of the dismissal of the writ petition, the interim application does not survive and is also accordingly dismissed. No order as to costs.

S.G. DIGE, J.

R.D. DHANUKA, J.