

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1300 OF 2020

Vasant Krushna Shante and Anr.

..Petitioners

Versus

Kalyan Dombivli Municipal Corporation and Ors.

..Respondents

Mr. Niyaz Ahmed, for the Petitioners.

Mr. Sandeep D. Shinde, for the Respondent Nos.1 to 4.

Mr. Rajesh S. Datar, for the Respondent No.5.

CORAM : NITIN W. SAMBRE, J.

DATE : 13th APRIL, 2022

PC.

1. This petition is by the plaintiffs to Special Civil Suit No.117 of 2019 (Old RCS No.289 of 2017) which is for declaration of ownership in relation to a particular area, right to receive FSI and other ancillary relief. While dealing with the prayer of the respondents/defendants preferred under Order VII Rule 11(b) of the CPC below Exh.21, vide order impugned order dated 30th November, 2018, the petitioners were directed to value the suit claim based on the prevailing market value of the FSI to the extent of 343.5 sq.mtrs.

2. The contentions are, the FSI since is not in existence the order of directing valuation and payment of Court fee is not sustainable.

3. The aforesaid submissions are required to be overruled, as the prayer in the plaint specifically deals with declaration about entitlement of the petitioners/plaintiffs for FSI. Such claim of the petitioners/plaintiffs will be required to be adjudicated based on the merits of the matter in the plaint and that being so, the Court below was justified in directing the valuation of the suit claim for payment of Court fee qua declaration about FSI. As such, said order does not call for interference.

4. Application Exh.49 is taken out by the petitioners/plaintiffs for appointment of Court Commissioner which is also rejected by the Trial Court vide order impugned dated 6th June, 2019.

5. The submissions are, after the area to the extent of 336 sq.mtrs. was acquired by the respondent Nos.1 to 4, it is necessary to find out holding of the petitioner qua the balance area in which the appointment of the Court Commissioner is necessary.

6. Admittedly, such application was moved at premature stage i.e. even before framing of the issues.

7. Whether the petitioners are entitled for appointment of Court Commissioner can be looked into by the Trial Court, once the petitioners/plaintiffs enter into the witness box and justifies their claim for clarification of the existing area of the property.

8. Granting liberty to that extent of moving afresh before the Trial Court at an appropriate stage, I hardly see any reason which warrants interference in the order impugned.

9. The petition as such stands dismissed with liberty as prayed for.

10. I am informed that the petitioners are senior citizens and the suit is pending for last about five years, that being so, Trial Court shall consider the prayer of the petitioners for expediting the suit.

[NITIN W. SAMBRE, J.]