

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5666 OF 2019

Gat Gram Panchayat, Dhaparla (Doye) through its (A) Sarpanch, Shri Patruji
Mahadeo Tajne and another

Vs.

Vithal Mandir Deosthan, through its Trustees (A) Ramdas s/o Mahadeo Mungale and
others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. N. Thengre, Advocate for petitioners.

Mr. V. N. Morande, Advocate for respondent nos.1 to 3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 02/08/2022

1. In pursuance to the order dated 16.12.2021, the Taluka Inspector of Land Records (T.I.L.R.) has measured the lands in question and has submitted a report to this Court.

2. The petition questions the order dated 16.3.2019, passed by the learned trial Court granting the application at Exh.5 filed by the plaintiff, who are respondent in this petition. The appeal carried by the defendants before the Appellate Court in Misc. Civil Appeal No.86 of 2019 came to be dismissed by judgment dated 30.4.2019. Both the Courts below concurrently hold that the defendants are not entitled to carry on any construction on the land bearing Survey No.2 admeasuring 1.20 H.R. mouza Dhaparla(Doye). At the instance of the petitioner (original defendant) this Court

by the order dated 16.12.2021 had directed a joint measurement of the land bearing Survey Nos.1 and 2 by the T.I.L.R., which report has been submitted which also supports the contention of the plaintiff that the construction work is being carried out on the land bearing Survey No.2, in view of which, there is no reason for me, to interfere in the impugned order and judgment.

3. This is more so, when the claim of the petitioner, for entitlement of land bearing Survey No.2, is based upon a plea that the open land admeasuring 112 X 80 = 8960 sq. ft. was transferred in the year 2013-14 by one Devidas Dattatraya Thakare, however, there is no document of transfer as required by law.

4. I therefore, do not see any reason to interfere with the concurrent findings rendered by the Courts below. It would be appropriate for petitioner, considering the nature of the controversy to get the suit decided on merits. The petitioner, shall be entitled to place the certified copy of the joint measurement report as submitted by the T.I.L.R. before the learned trial Court and so also its objections, which shall be duly considered by the learned trial Court as per law.

5. The Writ Petition is disposed of.

JUDGE