

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

WRIT PETITION NO.10179 OF 2021

1. Sheshrao s/o Bhanudas Gorde
Age: 47 years, Occ: Agri.,
R/o. Balanagar, Tq. Paithan,
Dist. Aurangabad.
 2. Machindra s/o Khanderao Gorde
Age: 39 years, Occ: Agri.,
R/o Balanagar, Tq. Paithan,
Dist. Aurangabad
 3. Dattatraya s/o Janardan Misal
Age: 50 years, Occ: Agri.,
R/o Balanagar, Tq. Paithan,
Dist. Aurangabad.
 4. Sakil s/o Aziz Qureshi
Age: 30 years, Occ : Agri.,
R/o Balanagar, Tq. Paithan,
Dist. Aurangabad
- ... Petitioners

Versus

1. The District Collector,
Aurangabad, Tq. & Dist. Aurangabad.
2. The Special Land Acquisition Officer,
Jayakwadi Project, Aurangabad
Office: Collector Office, Aurangabad
3. The Superintendent Engineer (Mech.)
Mech. Constructions & Management Division,
MSEDCL, Rural Circle Office, Aurangabad.
4. Executive Engineer (Mech),
Mech. Constructions & Management
Division, MSEDCL, Aurangabad
Office: Plot No.P-13, Ground Floor,
Major Store, A Building, Chikalthana,
MIDC, Aurangabad.
5. Deputy Executive Engineer,
Mahavitran Company, Sub-division,
Garkheda, Aurangabad,
Tq. & Dist. Aurangabad.

6. Branch Engineer,
Mahavitrans Company, 33-KV,
Sub Division, Balanagar, Tq. Paithan,
Dist. Aurangabad
 7. The Tahsildar, Paithan,
Tq. Paithan, Dist. Aurangabad.
 8. Taluka Inspector of Land Records,
Paithan, Tq. Paithan, Dist. Aurangabad
 9. The Talathi,
Talathi Sajja, Balanagar,
Tq. Paithan, Dist. Aurangabad
- ...Respondents

...
 Advocate for Petitioners : Mr. Vikram R. Dhorde
 AGP for Respondent Nos. 1, 2, 7 To 9 : Mr. S.R. Yadav Lonikar
 Advocate for Respondent No.6 : Mr. A.S. Shelke
 ...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21st JUNE, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 19/12/2020, passed by learned 13th Civil Judge, Senior Division, Aurangabad, below Exhibit-16 in R.C.S. No.1004/2018, thereby rejecting the application filed by petitioners/original plaintiffs under Order 26, Rule 9 of the Code of Civil Procedure.

2. Petitioners/plaintiffs filed the suit for declaration and perpetual injunction in respect of the suit property i.e. agricultural land in Gut No.345/2 (Old Gut No.345-A), admeasuring 0.21 R situated at Balanagar, Tq. Paithan, Dist. Aurangabad. By filing written statement and counter claim defendants opposed the suit.

They claimed that plaintiffs have encroached in the suit property to the extent of 21 R land and therefore, sought possession of the encroached portion from the plaintiffs. Thereafter, plaintiffs filed application Exhibit-16 seeking appointment of Court Commissioner which is rejected by the Trial Court. Hence, the present petition.

3. Heard learned advocate for petitioners, learned Additional Government Pleader for respondent Nos.1, 2, 7 to 9 and learned advocate for respondent No.6. Perused the memo of writ petition, annexures thereto and the impugned order.

4. Admittedly, application for appointment of Court Commissioner is filed at initial stage. Application Exhibit-5 is yet to be decided and issues are still not framed. This Court has consistently taken a view that application for appointment of Court Commissioner should not be entertained at preliminary stage and the same can be considered after conclusion of recording of evidence.

5. Petitioners will have to prove *prima facie* case and they may move application for appointment of Court Commissioner after conclusion of recording of evidence. Application filed by petitioners, since is at preliminary stage, this Court is not inclined to interfere in the order rejecting the same, at this stage.

6. In the result, writ petition is dismissed with liberty to the parties to prefer application for appointment of Court Commissioner after commencement of recording of evidence. If such application is filed, the same shall be considered on its own merit by the trial Court, without being influenced by order impugned in the present petition.

(NITIN B. SURYAWANSHI, J.)