

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9213 OF 2022

Malhari S/o Sakharam Holkar
and another

.... Petitioners

Versus

The State of Maharashtra
and others

.... Respondents

.....

Mr. Amol K. Gawali, Advocate for the Petitioners

Mr. P.G. Borade, AGP for Respondent Nos.1 to 3

Mr. P.P. Kohari, Advocate a/w Ms. Nandini Chittre, Advocate for
Respondent Nos.4 to 11, 12(B)(C) & 14

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JUNE, 2023

ORDER :

1. By this petition, filed under Articles 226 and 227 of the Constitution of India, the petitioners challenge the order passed by the learned Civil Judge, Senior Division, Ahmednagar, below Exhibit-175 in Regular Civil Suit No.54 of 2011.

2. Suit is filed by respondent Nos.4 to 14/original plaintiffs for directions to Taluka Inspector of Land Record to measure the suit property by showing boundaries of old Nagar-Junnar road, showing trees, construction, well, cattle shed or any other encroachment on the said road by

submitting the report. A permanent injunction is sought against defendant Nos. 4 and 14 for removal of the encroachment made by them on Nagar-Junner road. The defendants appeared and opposed the suit by filing written statement.

3. Admittedly, more than once, Commissioner was appointed to measure the suit property, and old Nagar-Junnar road. The last Commissioner's report at is at Exhibit-173. Defendant Nos.4 and 5 filed application Exhibit-175 for remeasurement of the land on the ground that the Surveyor did not measure the land as per order passed below Exhibit-167, and Cadastral Surveyor did not show the encroachment and width of the Nagar-Junnar road.

4. The application was opposed by the plaintiffs by filing say, stating that measurement was carried out as per the order of the Court passed below Exhibit-167, and after conducting the measurement, map is prepared, the defendants have raised objection only to prolong the matter.

5. The Trial Court after hearing the parties, issued notice to the concerned Cadastral Surveyor namely, G.B. Garad, District Superintendent of Land Records, Ahmednagar

to clarify regarding the width of road on the basis of boundaries shown by him in the measurement map. The Trial Court has observed in the impugned order that, admittedly, the concerned Cadastral Surveyor did not mention the width of the road, though he was shown boundaries of both the lands and the disputed road. Therefore, it cannot be directed to re-measure the land though notice can be issued to him for clarification of width of the road as per the boundaries shown in the measurement map. Accordingly, the direction is issued. Hence, the present petition.

6. Having heard the learned advocate for the petitioners, learned advocate for the respondent Nos. 4 to 11, 12(B)(C), learned Assistant Government Pleader for respondent Nos. 1 to 3 and after going through the writ petition memo, annexures thereto and the impugned order, this Court is of the considered view that the petitioners have opportunity to cross-examine the Cadastral Surveyor namely, Shri G.B. Garad, District Superintendent of Land Records, Ahmednagar, when he appears in the Trial Court for clarifying width of the road on the basis of boundaries shown by him in the measurement map. It is not clear from the record as to

how his report is marked at Exhibit-173 without recording his testimony before the Trial Court.

7. By keeping the challenge raised by the petitioners in this petition open, the writ petition is disposed of.

8. Both the parties are at liberty to cross-examine Shri G.B. Garad, District Superintendent of Land Records, Ahmednagar.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane