

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.13145 OF 2022**

ABDUL RAZZAK BASHIR AHMAD INAMDAR
VERSUS
MADHUKAR BALKRISHNA KULKARNI AND OTHERS

...
Mr. Avinash D. Hande, Advocate for the Petitioner.
...

**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 02nd FEBRUARY, 2023.**

PER COURT:-

1. Heard.
2. By this petition petitioner challenges the order dated 26.04.2022 passed by the Trial Court below Exhibit-60 rejecting the petitioner's application for inspection of the suit property.
3. Learned counsel for the petitioner submits that, the suit was filed for the specific performance of sale-deed and for setting aside the sale deed, which was executed by defendant nos.1, 2 and 3 in favour of defendant no.5. He would further submit that during the pendency of the proceeding, defendant no.5 had given undertaking as to maintain status quo of the suit building. However, in breach of the undertaking, defendant no.5 has demolished the suit structure and as such, the inspection was sought under the provisions of Order XXXIX Rule 7 r/w Order XXVI Rule 9 of the Code of Civil Procedure. He would submit that the Trial Court has proceeded on the basis that the appointment of the Court Commissioner is sought under the provisions of Order XXVI Rule 9 and as such, amounts to collection of evidence.

4. The case of the petitioner is that there is a breach of the undertaking, which has been given by defendant no.5 and as such, the suit building is now demolished in breach of his undertaking.

5. It is for the petitioner to take out appropriate application for the disobedience of the order of the Court. The purpose of a local inspection under the provision of Order XXXIX Rule 7 is in respect of the detention, preservation of the subject matter of the suit, which also includes the inspection for the said purpose. In the present case what the petitioner is seeking is an inspection for the purpose of proving demolition of the suit property. In such an event, it is the petitioner himself who was aware of the position prior to the demolition and could demonstrate by appropriate methods including photographs, as to the status of the suit property subsequent to the order of the status quo which was passed. In my view in the facts of the case the application for seeking local inspection under the provision of Order XXXIX Rule 7 or under Order XXVI Rule 9 of the Code of Civil Procedure is misconceived.

6. Writ Petition is devoid of merits and is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE