

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11336 OF 2023

Shivaji Sakharam Meher

Petitioner

Versus

Prakash Sukhdeo Thorat And Others

Respondents

Mr. S.S. Dixit, Advocate for the petitioner.

Mr. S.T. Shelke, Advocate for respondent No. 1.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th SEPTEMBER, 2023

ORDER :

1. This petition filed under Article 227 of the Constitution of India, challenges the orders dated 20.07.2023, passed by learned 2nd Joint Civil Judge, Senior Division, Sangamner, below Exhibit-101 and 103 in Regular Darkhast No. 496/2012.

2. Petitioner/Judgment Debtor filed application Exhibit-101 for setting aside the order of closure of his evidence and further sought permission to lead evidence. By application Exhibit-103, petitioner has prayed for issuance of witness summons to the Assistant Director, Town Planning Department, Ahmednagar.

3. Respondent No. 1/Decree holder has filed execution proceeding for execution of the decree passed in Regular Civil Suit No. 338/1998, by which the judgment debtor is perpetually restrained from obstructing decree holder's possession over the suit property.

4. After appearance judgment debtor has opposed the execution petition. The matter was fixed for evidence of the judgment debtor from 03.04.2023. On 08.06.2023, judgment debtor filed application for issuing witness summons to the employee of Municipal Council. Though, he was directed to file witness list, advocate for the judgment debtor has informed the court that only one witness is to be examined and therefore, did not file witness list. Said application was allowed and witness from the Municipal Council was examined on 20.06.2023. On the same day, judgment debtor filed application for issuing witness summons to the Chief Officer, Nagar Parishad, Sangamner, to prove that he is depositing municipal taxes. However, no documents were filed along with the said application. Thereafter, judgment debtor filed nine documents from the Nagar Parishad. Those documents were directed to be read in the evidence. Therefore, application for issuance of witness summons to the

Chief Officer, Nagar Parishad, was not pressed by the judgment debtor on 23.06.2023. Thereafter, judgment debtor filed application on 27.06.2023 contending that important documents could not be produced and therefore he is not in a position to lead evidence. Said application was rejected by the Executing Court. Since no application or documents were filed by the judgment debtor, on 30.06.2023, after hearing the arguments of the advocate of the judgment debtor, Executing Court passed the order on Exhibit-1, thereby closing the evidence of judgment debtor and the matter was posted for final argument. On the date of final argument, application Exhibit-101 is filed by Judgment Debtor for recalling the order of closure of evidence and permitting him to lead evidence. Executing Court has rejected the application holding that layout and plan submitted by the judgment debtor is already proved on record. The execution proceeding is 11 years old and is required to be disposed of on priority basis. In spite of sufficient opportunity judgment debtor has failed to utilise the same and therefore there is no substance in the prayer made by the judgment debtor.

5. Application Exhibit-103 filed by the petitioner for issuance of witness summons to the Assistant Director, Town

Planning Department, is also rejected holding that sanctioned layout and plan was submitted to the Sangamner Nagar Parishad and same is filed along with list Exhibit-35. Nagar Parishad officer is examined and layout Exhibit-66 is proved. Therefore, layout and plan can be read in the evidence. Therefore, it is not necessary to call the said witness. Petitioner is aggrieved by both the orders passed below Exhibit-101 and 103.

6. Heard the learned advocate for the petitioner and learned advocate for respondent No. 1. Perused the writ petition memo, annexures thereto and the impugned orders.

7. By relying on Section 47 of Code of Civil Procedure and Section 83 of Indian Evidence Act, learned advocate for the petitioner submits that, though there is presumption that the court shall presume that the maps or plans purporting to be made by the authorities of the Central Government or any State Government were so made and are accurate; but maps or plans or charts made for the purpose of any particular cause must be proved to be accurate. He therefore submits that so as to prove the map and plan at Exhibit-66, it is necessary to record the evidence of Assistant Director, Town Planning Department. By the impugned orders, Executing Court has denied the reasonable

and fair opportunity to the petitioner and therefore impugned orders are liable to be quashed and set aside.

8. On the other hand, learned advocate for the Respondent No. 1 support the impugned orders.

9. Admittedly, the execution proceeding is filed by respondent No. 1/decreed holder and burden lies on him to prove his contention. The map and plan is already proved on record as has been observed by the Executing Court and therefore it can be read in the evidence. In that view of the matter, Executing Court is justified in rejecting both the applications filed by the petitioner. There is no illegality or perversity in the orders impugned in the present petition. No case is made out by the petitioner to warrant interference in the extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]