

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

55 WRIT PETITION NO.10948 OF 2022

**MARUTI TUKARAM SHELAR
VERSUS
THE DISTRICT COLLECTOR AND OTHERS**

...
Advocate for Petitioner : Mr. Yuvraj S. Choudhari
AGP for Respondent – State : Mr. S.N. Morampalle
Advocate for Respondent No.3 : Mr. D.P. Palodkar
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 11-01-2023

PER COURT :

. Heard the learned counsel appearing for the parties.

2. The petitioner is aggrieved by the impugned order dated 13.10.2022 for appointment of the Court Commissioner, whereby the Court Commissioner was appointed and he was directed to visit the land of the petitioner and the respondents and to conduct inspection of lands bearing Gat Nos.434 and 431 and to submit a report as regards the ways which are available to land Gat No.431. The said application came to be allowed in Misc. Civil Appeal No.8 of 2020 filed by the respondent no.3 against the order passed in R.C.S. No.227 of 2018 rejecting his application below Exh.5.

3. In the proceeding under Section 5 of the Mamlatdars' Courts Act, the Tahsildar had visited the spot and prepared a

panchanama and permitted right of way which is the subject matter of challenge in R.C.S. No. 227 of 2018.

4. Considering the fact that the panchanama of the Tahsildar which is already on record, the appointment of an Advocate as Court Commissioner to find out any alternate way available to the petitioner, would amount to collection of evidence which is impermissible under the provisions of Order-XXVI, Rule-9 of the Code of Civil Procedure. As such, the impugned order dated 13.10.2022 to the extent of appointment of an advocate as Court Commissioner is quashed and set aside. By the impugned order, the parties were directed to maintain status-quo and not to construct road or not to remove the road and were permitted to use the way only by walking.

5. The learned counsel for the petitioner submits that there is no other way to his land and in view of standing crop, he may be permitted to use tractor / bullock cart on the already existing road.

6. At this stage, I am not inclined to disturb the order of the status-quo. In the interest of justice it would be appropriate, if the District Judge is directed to decide the Misc. Civil Appeal No.8 of 2020 within a period of three weeks from today.

7. Let Misc. Civil Appeal No.8 of 2020 be decided within a period of three weeks from today.

8. Writ petition is disposed of in above terms.

9. The District Judge-1, Shrigonda to decide the Misc. Civil Appeal No.8 of 2020 on its own merits and without being influenced the observations made in the present order.

(SHARMILA U. DESHMUKH, J.)

GGP