

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5021 OF 2022

Maruti Dnyandeo Padule

.. Petitioner

Versus

Buvasaheb Maruti Dhanave & Ors.

.. Respondents

-
- Mr. Samir A. Kumbhakoni for Petitioner
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 03, 2023

P.C.:

1. Heard Mr. Kumbhakoni, learned Advocate for Petitioner.
Perused the impugned order dated 23.11.2021 passed below Exh. 7.

2. Mr. Kumbhakoni would submit that Petitioner (Plaintiff) has filed a suit in the Trial Court seeking declaration in respect of his holding in Plot No. 1, *inter alia*, pertaining to Gat No. 207/2. Perusal of the impugned order and pleadings indicates that there are 46 plots in the layout wherein the suit plot is situated. The case of the Petitioner is based upon a registered sale deed which would govern the Plaintiff's case in the Trial Court. An Application is made by Plaintiff seeking measurement of the suit property i.e. Plot No. 1. Record indicates that the area of Plot No. 1 is 120 sq. mtrs. pursuant to the D.S.L.R. measurement and extract of the year 1996-97. To this Mr. Kumbhakoni would submit that according to him, the area of the plot held by the Petitioner would be 299.62 sq. mtrs. and in order to

erase this discrepancy, measurement is required. After considering the Petitioner's case, the learned Trial Court has examined the issue and come to the conclusion that the Petitioner's case can be resolved as boundary dispute. As far back on 23.01.2014, the D.S.L.R., Karmala has passed a substantive order under the provisions of Section 258 of the Maharashtra Land Revenue Code, 1966 in the case of Shri. Satyapal Durgalal Shrivastava and 42 other plot holders in the same layout wherein the Petitioner's plot is situated. In that order, the details of holding of each of the plot holder including the Petitioner pursuant to the measurement carried out by the D.S.L.R. have been stated. Perusal of the said order which is placed at Exh 'F' to the Petition reveals that in so far as Petitioner is concerned, substantial portion of the Petitioner's plot holding has been acquired or taken away during the highway expansion process and therefore, the original holding of the Petitioner has been reduced by almost 258 sq. mtrs. Such is the case in respect to the other plots also but in different denominations.

3. The learned Trial Court while disposing of the Application filed by the Petitioner has come to the definite conclusion that pursuant to the measurement by the D.S.L.R. in the year 1996-97 and the record produced by the Petitioner as well as both the parties, it clearly reveals that the record of Gat No. 207/2 is not clear. The

learned Trial Court has also come to the conclusion that the layout map is also not sanctioned. In that view of the matter unless and until all plots in the said layout are measured, the actual position and measurement of Petitioner's plot No. 1 cannot be ascertained. I agree with the findings returned by the learned Trial Court in paragraph 4 of the impugned order. It therefore calls for no interference. Hence, the impugned order dated 23.11.2021 is sustained.

4. Needless to state that the Petitioner will be at liberty to apply to the statutory / competent Authority if the Petitioner so desires to challenge the order dated 23.01.2014, in accordance with law. If any such Application is made, all contentions of the parties are expressly kept open and the same shall be decided strictly in accordance with law.

5. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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