

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3024 OF 2022

Kapoorchand Hemraj Dodhia

..Petitioner

V/s.

State of Maharashtra

and Anr.

..Respondents

Ms. Anita Bhaktwani for the Petitioner.

Mr. Y.D. Patil, AGP for the Respondent/State.

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CORAM : R.D.DHANUKA, AND
M.M.SATHAYE, JJ.

DATE : 2nd JANUARY 2023

P.C.

. By this petition filed under Article 226 of the Constitution of India, Petitioner seeks a writ of mandamus against the Respondents to carryout survey and demarcation i.e. land survey No. 37/7 of Temghar Bhiwandi, District Thane and for an order and direction against the Respondents to demolish the illegal construction described in prayer clause (b) of the petition.

2. We have perused the annexures to this petition including the order dated 15.03.2017 passed by the learned Civil Judge, Junior Judge, Bhiwandi rejecting the application Exh. 7 filed by the Petitioner under Order XXVI Rule 9 of the C.P.C. for issuance of Court Commissioner. The Petitioner had filed this

application in a suit for perpetual injunction claiming to be owner and is in possession of suit land. The grievance of the Petitioner in the said application was that the defendant had no concern with the suit land and was trying to encroach upon the suit land. The defendant in the said proceedings had opposed the said application on the ground that there was no question of dispute about identity of the suit land. There was no case about boundary dispute and encroachment and thus, Court Commissioner cannot be appointed.

3. The Civil Court accordingly rejected the said application on the ground that this is not a fit case to order measurement of the suit land through Dy. Superintendent of Land Record, Bhiwandi. The Trial Court also observed that it was nothing but to collect the evidence by way of said application.

4. We have perused the averments made in Writ Petition. The Petitioner appears to have made application time and again for carrying out measurement and demarcation on the same ground on which the said application was made before the Trial Court under Order XXVII Rule 9 of the C.P.C. for issuance of Court Commissioner. The Petitioner has admittedly not challenged the said order dated 15.03.2017 passed by the learned Civil Judge Junior Division, Bhiwandi and has chosen to file this Writ Petition for the same relief.

5. Writ Petition is misconceived and is accordingly rejected.
No order as to costs.

6. It is made clear that insofar as the prayer clause (b) is concerned, the Petitioner would be at liberty to file appropriate proceedings for enforcement of letter dated 27.11.2018 annexed at page 31 of the petition.

M.M.SATHAYE, J.

R.D.DHANUKA, J.