



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 8469 OF 2022

1. Haridas Devidas Akhare,
Aged 46 years, Occ. : Teacher,
2. Sau. Anita Haridas Akhare @
Ku. Anita M. Dandale,
Aged 43 years, Occ. : Service,

Both R/o. Shriram Nagar,
Shegaon, Tah. Shegaon,
Dist. Buldana.

.... **PETITIONERS.**

// **VERSUS** //

1. Bhikamsingh Chatarsingh Sarkar
(Sapkal), Aged 71 years, Occu.: Retired,
R/o. "Hari Om", 12, Shriram Nagar,
Shegaon, Tah. Shegaon, Dist. Buldhana.
2. The Municipal Council,
Shegaon, Through Chief Officer,
Shegaon, Tah. Shegaon, Dist. Buldhana.

.... **RESPONDENTS.**

Shri A.A.Dhawas, Advocate for Petitioner.
Shri D.M.Kale, Advocate for Respondent No.2.
None for Respondent No.1

CORAM : **ANIL S. KILOR, J.**
DATED : **DECEMBER 19, 2023**

ORAL JUDGMENT :

1. Heard learned counsel for the petitioner and respondent No.2. None for the respondent No.1 though served.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. The order dated 29/04/2022 passed by the Civil Judge Junior Division, Shegaon in Regular Civil Suit No.47 of 2016 allowing the application for appointment of Court Commissioner and submit report as regards the case of the plaintiff that the defendant Nos. 2 and 3 have made encroachment upon the road on front side of his house and it is causing inconvenience to him for ingress and egress of his house, which is situated opposite side of the house of the defendants, is under challenge in this writ petition.

4. The challenge is raised only on the ground that the plaintiff without entering into the witness box and establishing the basic facts and the case as regards encroachment, applying for appointment of

Commissioner is premature. It is submitted that such request can only be considered at an appropriate stage. For this purpose, he has placed reliance on the judgment of the Coordinate Bench of this Court in the case of *Mahadeo Kondiba Shinde ..vs.. Nitin Sakharam Shinde and another*, dated 16/03/2021 passed in **Writ Petition No.215 of 2019**, wherein the Court has held thus :

“17. In view of the same, and since there are catena of judgments and orders passed by this court taking consistent view, in the instant case, the order impugned is premature one. The parties have not yet stepped into witness box. The trial court may appoint the court commissioner if the same appears to be necessary to elucidate the matter in dispute. Thus, the order impugned is liable to be set aside with liberty to the parties to file an application for appointment of T.I.L.R. as Court Commissioner at the stage of evidence.”

5. In light of the above referred observation, I am of the opinion that as the party has not yet stepped into the witness box, the Court has committed an error in allowing the application for appointment of the Court Commissioner. After the evidence, if the trial Court consider it necessary for the purposes to elucidate the matter in dispute, the Court Commissioner may be appointed.

6. In that view of the matter, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 29/04/2022 passed by the Civil Judge Junior Division, Shegaon in R.C.S. No.47 of 2016 is hereby quashed and set aside with liberty to the plaintiff to apply afresh for appointment of the Court Commissioner at an appropriate stage. .

The Writ Petition is **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

RRaut..