

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 317 OF 2023

Sanjay Laxmanrao Gawande and ors __ Vs. __ Pushpa Dadarao Pundekar thr PAO
and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Atharv Manohar, Advocate for petitioners
Mrs. R.S.Sirpurkar, Advocate for Respondent No. 1
Mrs. M.A.Barabde, Advocate for Respondent Nos. 2 & 3
Mr. A.J.Thakkar, Advocate for Respondent No.4

CORAM : AVINASH G. GHAROTE, J.

DATE : 20/03/2023

1] Heard Mr. Manohar, learned counsel for the petitioner and Mrs. Sirpurkar, learned counsel for respondent No.1. Learned AGP appears for respondent Nos. 2 & 3 and Mr. Thakkar, learned counsel appears for respondent No.4.

2] The petition questions the impugned order dated 14.9.2022 (pg.118) below Exh. 179, by which the application for measurement of the DP road, which is 15 mtr wide in the lay out of Survey Nos. 651 & 651/2A, has been rejected.

3] There are allegations and counter allegations by the petitioners as well as the respondent no.1 having encroached upon the land of

the DP road. Considering this position, since the suit and the counter claim is for removal of encroachment, it would be necessary for a joint measurement to be carried out by the Superintendent of Land Records for demarcating the DP road as well as encroachment made by either of the parties, as the earlier measurement reports only show the DP road and not the encroachment made thereupon by the petitioners or respondent no.1.

4] Since in a suit for removal of encroachment, the claim and counter claim regarding, who has made the encroachment on the land of the DP road and to what extent, will have to be determined, the impugned order is, therefore, quashed and set aside and the Superintendent of Land Records, Akot, is hereby appointed to carry out the measurement of the DP road, in the presence of the plaintiffs as well as defendants and to submit his report regarding the encroachment made thereupon by all persons including the plaintiffs and the defendants, including the detailed calculations as to the quantum and extent of the encroachment made on the DP road with the 'Vaslewari'. Such measurement shall be carried out within a period of 15 days from today and the report thereof shall be

submitted to the learned trial Court within that duration.

5] The parties shall appear before the Superintendent of Land Records, Akot, and supply all the documents to him as necessary within a period of three days from today. The measurement shall be carried out on 27.3.2023 in which the plaintiffs and the defendants undertake to remain present and no separate notice shall be necessary in this regard to be issued to them.

6] The Superintendent of Land Records, Akot, shall also take into consideration the earlier reports of measurement in conducting the present matter while carrying out the measurement. The petitioners shall deposit the cost of the measurement within three days with the Superintendent of Land Records, Akot.

7] In view of the above observations, the petition is disposed of. No costs.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:20.03.2023 19:42