



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

920 WRIT PETITION NO. 8563 OF 2023

Nemichand Balchand Bhurewal

VERSUS

Keshav Vyankatrao Yadav And Others

...

Advocate for the Petitioner : Mr. Bora Satyajit S.

Advocate for Respondents No.2A to 2C : Mr. V. R.Naik

...

CORAM : R. M. JOSHI, J.

Dated : July 23, 2024

PER COURT :-

1. Heard. By consent of both parties, heard finally at admission stage.
2. This petition takes exception to order passed below Exhibit 79 in LAR No.294/2019 whereby the application filed by the petitioner/ objector therein is rejected by the learned District Judge-6, Jalna.
3. Petitioner and respondent are real brothers. Petitioner claims that Survey No.149 though recorded in the name of respondent is in fact in possession of the petitioner and Survey No.148 recorded in his name in possession of respondent. The proceeding bearing RCS No.181/2011 came to be filed and the said suit is dismissed by Judgment dated 17/01/2017. In the meantime, 1 H 00096 R from Gut No.148 came to be acquired for 'Samruddhi Mahamarg' under Maharashtra Highways Act, 1955. A dispute was raised by the present petitioner in respect of the apportionment of the said amount of compensation. In view of the said dispute, the Reference was made to the competent Court under Section 19 (c)(4) of the Act. The said proceeding is numbered as LAR No.294/2019.

4. In this proceeding, the petitioner filed application Exhibit 79 for appointment of Court Commissioner to measure land. This application is rejected by the Reference Court with the observation that the issue before the said Court is in respect of apportionment of the amount of compensation and the scope of the Reference cannot be enlarged.

5. Perusal of the record indicates that the dispute between the parties is in respect of the ownership of Survey No.148 and 149 which are independent lands. There was no dispute with regard to the measurements of the said properties at any point of time. Only dispute before the Reference Court is with regard to the apportionment of the compensation and to decide the entitlement of petitioner or respondent, to receive the said compensation. In the light of these facts, there is no issue involved with regard to the measurement of the suit properties and as rightly held by the learned Reference Court that entertainment of such issue would amount to enlargement of the scope of the Reference. In any case, having regard to the facts and circumstances of the case, it is not a fit case wherein appointment of Court Commissioner is required.

6. In view of the above, petition is dismissed.

(R. M. JOSHI, J.)

vj gawade/-.