



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

Writ Petition No.3739/2024
Dhanraj V Vijay and another

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

Court's or Judge's orders

Mr. A.D. Dangore, Advocate for petitioner.
Mr. S.P. Kshirsagar, Advocate for respondent nos.1 and 2.

CORAM : N.R. Borkar, J.
DATE : 17-12-2024.

This petition takes exception to the order dated 22-04-2024 passed by the learned Civil Judge, Senior Division, Nagpur below Exhibit-39 in Regular Civil Suit No.358/2020.

ii. The petitioner herein has filed a suit for declaration, removal of encroachment and possession. By the order impugned the trial Court has rejected the application filed by the petitioner for appointment of Court Commissioner to remeasure the subject lands.

iii. I have heard the learned counsel for the petitioner and the learned counsel for respondent. The learned counsel for the petitioner submits that by order dated 17/09/2022, the application filed by the petitioner for appointment of Court Commissioner was allowed and Deputy Superintendent of Land Records (DSLRL) was appointed as Court Commissioner to

measure the subject lands. It is submitted that various directions were issued to the Deputy Superintendent of Land Records, however, the office of Deputy Superintendent of Land Records has, submitted the very cryptic report ignoring those directions. It is submitted that, thus, the application for re-measurement was filed, however, by the order impugned, the trial Court has rejected it for no valid reasons.

iv. On the other hand the learned counsel for the respondent has supported the order impugned.

v. Admittedly, earlier application filed by the petitioner for appointment of Court Commissioner to measure the subject lands was allowed by the order dated 17/09/2022. The operative part of the said order reads thus :-

"ORDER

- 1] The application at Exh.26 is allowed.*
- 2] The Deputy Superintendent of Land Records (Nagpur) (Rural) is hereby appointed as the Court Commissioner to carry out the measurement of entire land Survey No.43/1, 43/2 and 43/3 situated at Mouza Hudkeshwar, Taluka District Nagpur.*
- 3] The Court Commissioner is directed to initially locate the boundaries of Survey Numbers i.e. 43/1.*

43/2 and 43/3 and thereafter he shall locate the Plot No.44 in Survey No.42/3 as per the layout plan of Shivaji Nagar Sahakari Bhadekaru Malki Gruha Nirman Society Ltd., Nagpur and the Plot No.7 in the layout plan of M/s Kamakshi Gruha Nirman Sahakri Sanstha Ltd. He shall take into consideration the contents in the sale deed of plaintiff and defendant for that purpose.

- 4] The Court Commissioner thereafter take measurements of the plot of plaintiff and the plot of defendant as per the boundaries located and as per the possession shown by the plaintiff and defendants and shall prepare common measurement map accordingly.*
- 5] The Court Commissioner shall show the encroachment, if any, committed by the defendant in the Plot No.44 situated in lay out of Shankar Nagar Society.*
- 6] The plaintiff is directed to deposit the necessary measurement charges in the office of the Deputy Superintendent of Land Record (Nagpur) (Rural) within seven working days from today and submit the copy of receipt in this Court.*
- 7] The Court Commissioner shall carry out the commission work within a month from the date of depositing the measurement charges and submit the report thereafter as early as possible.*
- 8] The Court Commissioner shall issue the prior notice to the concern parties including the plaintiff and defendants.*

9] *The plaintiff and defendants shall remain present along with their learned advocate (if they feel the presence of their advocate necessary) at the time of commission work.*

10] *Plaintiff shall submit the copy of plaint, the written statement and the relevant documents for preparing the commission writ.*

11] *Issue commission writ accordingly."*

vi. I have perused the report/map submitted by the office of Deputy Superintendent of Land Records pursuance to the order passed by the trial Court dated 17/09/2022. The report is vague and it would no way help the Court to resolve the dispute between the parties. The learned trial Court was therefore not justified in rejecting the application filed by the petitioner for re-measurement. The order impugned is thus set aside.

vii. The learned trial Court shall seek fresh report, expeditiously.

viii. The petition is disposed of in aforesaid terms.

(N.R. Borkar, J.)