



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

956 WRIT PETITION NO. 2641 OF 2024

ANITKABAI W/O LAXMANRAO RENGHE AND ORS
VERSUS
THE STATE OF MAHARASHTRA THR THE COLLECTOR, PARBHANI AND
ORS

Mr. S. S. Rathi, Advocate for the Petitioners
Mr. M. M. Patil (Beedkar), Advocate for Respondent No.6.

CORAM : R. M. JOSHI, J.

DATE : 9th SEPTEMBER, 2025

P.C. :-

1. This Petition takes exception to the order passed below Exhibit 245 in R.C.S. No. 150/2009, whereby the Application for appointment of Court Commissioner for measurement of the subject properties came to be allowed.

2. Learned Counsel for the Petitioners submits that the Defendants have previously filed Application vide Exhibit 71 for appointment of Court Commissioner which came to be allowed on 20/07/2013. This order was challenged in Writ Petition No. 7675/2013 and the said order came to be set aside with liberty to file appropriate Application after the parties lead their evidence. It is his submission that the Defendants without leading any evidence are seeking appointment of Court Commissioner which amounts to collection of evidence through the Court which is impermissible in law.

3. Learned Counsel for the contesting Respondent supported the impugned order. It is his submission that this Court has set aside the order of appointment of the Court Commissioner on the ground that the said Application was made at premature stage. It is his submission by relying upon the judgment of this Court in case of ***Pandit Vithal Landage Vs. Vishnu Govind Pawar and Anr.***¹ that the term elucidation of the matter in controversy cannot be equated to elucidation of the evidence adduced by the parties. It is his submission that there is no hard and fast rule that the Court Commissioner cannot be appointed before the parties have adduced evidence.

4. There cannot be any dispute made with regard to the proposition sought to be canvassed by the learned Counsel for the contesting Respondent relying upon the judgment in case of ***Pandit Vithal Landage Vs. Vishnu Govind Pawar and Anr*** (supra). In the said judgment, however, the issue of the collection of evidence by the parties in appointment of Court Commissioner was neither canvassed nor dealt with. It is settled position of law that the appointment of Court Commissioner is not permissible in order to collect the evidence on behalf of the parties. Meaning thereby the parties to lead the evidence first and in case any explanation or elucidation is required of the matter appointment of Court Commissioner is permissible. In respectful view of

¹ Writ Petition No.5158/2024

this Court the judgment in case of *Pandit Vithal Landage Vs. Vishnu Govind Pawar and Anr* (supra) therefore has no application to the present case.

5. Needless to say that though the Application ought not to have been allowed by the Trial Court at the stage i.e. before Defendants lead their evidence, it is open for the Defendants to make appropriate Application after the evidence is lead and the Court may pass appropriate order on the merits of such Application, if filed.

6. In view of this, Petition stands allowed. Impugned order is set aside with liberty as observed herein.

(R. M. JOSHI, J.)

ssp