

MHLA170032942023



R. C. S. No.510/2023  
Old R. C. S. No.518/2016  
Rushikesh Deshmukh Vs.  
The Secretary Ministry of Road  
Transport and Highway and others.

**ORDER BELOW EXH.95**

**(Order Passed on the Day of 27<sup>th</sup> January, 2026)**

The plaintiff has filed application under Order XXVI Rule 9 of the Code of Civil Procedure for the appointment of Court Commissioner submitting that, plaintiff is Karta of Hindu undivided family. He and his brother namely, Nilesh are members of said family. They have agricultural land in Gat No. 302 admeasuring 27 R situated at Belkund, Tq. Ausa, Dist. Latur. More specifically described in para No. 1 of the application along with its four boundaries.

Defendant No. 4 is claiming his ownership over the suit land and he is trying to obtain compensation amount of land acquired for the National Highway as described in the plaint. Defendant No. 4 is claiming his ownership over the suit land on the strength of sale deed bearing day book No.603/2001 dated 15/03/2001. The suit land is the ancestral property of the plaintiff. The ownership of defendant No. 4 is relating to the specific area according to the sale deed (Exh.34). Therefore, to ascertain the situation of the suit land and land of defendant No. 4 it is necessary to appoint T.I.L.R. as a Court Commissioner for measurement of the land in Gat No. 302 and to file the report according to situation of suit land and the property of defendant

No.4 as per the sale deed (Exh.34). Therefore, it is prayed by the plaintiff that, his application be allowed.

2. Perused the say (Exh.97) of defendant No. 4. He has objected the application on the grounds that, the application filed by the plaintiff is false, frivolous and it is filed with malafide intention to prolong the suit which is pending since 2016. The record shows that, the plaintiff being all the while protracting the trial of suit with malafide intention to harass the defendant. Due to pendency of this suit the compensation amount by defendant Nos. 1 to 3 is still lying with them. Defendant No. 4 is legally entitled to get said compensation amount.

The plaintiff has filed similar application at Exh. 77, which was rejected on merits vide order dated 30/03/2022. The said order shall operate as *res-judicata* against the plaintiff. Hence, this application cannot be entertained at all. Defendant No. 4 has specifically denied location, boundaries of alleged 37 R land and title of plaintiff over the said land. The burden of proof is on the plaintiff to prove his title over the suit land. Issues framed by the Court also reveal that the suit involves inquiry about the title of the plaintiff and not about the title of defendant No. 4. Therefore, the plaintiff shall have to prove his title over the suit land.

The award of acquired land is passed in the name of defendant No. 4 after due inquiry of title. Therefore, it is not

necessary to locate and ascertain land of defendant No. 4. Under such circumstances, appointment of Court Commissioner is absolutely not necessary. It appears that, the plaintiff is attempting to collect the evidence with the help of the Court. The title and location cannot be ascertained by measurement. The plaintiff shall have to prove his title independently. There are several co-owners, co-shares in Gat No. 302. The location and situation of each sharer cannot be ascertained by measurement. More particularly land cannot be measured on the basis of private title deeds. Already the land has been measured during acquisition proceeding and unless that measurement is proven to be wrong, no re-measurement can be order for the similar purpose. Hence, it is prayed by defendant No. 4 that, the application filed by the plaintiff be rejected with costs.

3. Heard learned counsels for both the parties. The learned counsel for the plaintiff argued that, it is necessary to measure the land situated in Gat No. 302 with respect to the land of defendant No. 4 as defendant No. 4 is trying to obtain compensation amount of acquired land which belongs to the plaintiff. Therefore, the learned counsel for plaintiff prayed to allow the application for just decision of the suit.

4. Learned counsel for defendant No. 4 argued that, nowhere it is come on the evidence lead by plaintiff at Exh. 86 in his affidavit of examination-in-chief as well as cross-

examination that, defendant No. 4 has encroached upon land of the plaintiff. Another witness Uttam Patil (PW-2) examined by the plaintiff is not the witness of sale deed of defendant No. 4. He does not know the boundaries of the land mentioned in sale deed. Therefore, the burden is upon the plaintiff to prove his title over the suit land. Hence, the Court Commissioner cannot be appointed to collect the evidence or to measure the suit land according to the sale deed of defendant No. 4. The suit land can be measured only as per the revenue record and not as per the sale deed. Hence, the learned counsel for defendant No. 4 prayed to reject the application.

5. Perused the record. It reveals that, after conducting measurement the suit land is acquired by the National Highway Authority for the widening of National Highway No. 361. During the measurement according to the revenue record the land acquired was in the name of defendant No. 4. Therefore, the award was passed in the name of defendant No. 4 granting him compensation amount. However, the plaintiff has objected for the same and filed this suit. After going through the evidence adduced by the plaintiff at Exh. 86 and another witness namely Uttam Patil (PW 2) at Exh. 93 does not prove specifically that the land acquired for the National Highway No. 361 belongs to the plaintiff and plaintiff has the title over the said land. The Court

Commissioner cannot be appointed to prove the title of plaintiff over the suit land by collecting evidence.

6. The plaintiff has filed this suit praying that, the plaintiff may be declared as interested person to the compensation amount for the acquired land and defendants may be directed to pay the compensation amount to plaintiff. Once the measurement is done by the authority while acquiring the land, it is not been challenged by the plaintiff in this suit. More particularly the award based on said measurement is also not challenged by the plaintiff in this suit. The plaintiff has only claimed his share in the compensation amount. Unless the plaintiff proves his title over the acquired suit land, he is not entitled for the compensation. The plaintiff shall prove his title by bringing evidence on his footing and not taking the help of other remedies such as Court Commissioner which would amount to collecting the evidence. Hence, the application of the plaintiff is liable to be rejected. Therefore, I pass following order:-

**ORDER**

The application is rejected.

Date:-27.01.2026.

(P. I. Mokashi)  
Civil Judge Senior Division, Ausa.