

MHNS100000432026



Misc. Civil Appeal No.05/2026

Dnyaneshwar Popal Wadhawane & Other-1

Vs.

State of Maharashtra

Through District Collector, Nashik & Other-16

Order below Exh.34.

Perused the application. Perused the affidavit Exh.35.
Perused the say Exh.36. Heard both sides at length.

2. It is pertinent to note that this Misc. Civil Appeal is filed by the original plaintiffs challenging order dated 08.01.2026, passed by Ld. Civil Judge, Senior Division, Niphad below Exh.5 in Regular Civil Suit No.92/2023. During hearing of the said appeal, this Court considering the rival submissions and documents suggested both the parties to move common application for Court Commissioner so as to bring on record factual position. Thereafter, on few terms and conditions and prayers, both parties were in dis-agreement and therefore, both parties moved separate application for appointment of Court Commissioner with different prayers. Thereafter, all of sudden, the respondents herein not pressed their application Exh.33 on 10.03.2026 for the reasons best known to them and opposed the present application Exh.34 of the appellants as per say Exh.36 on the

point that there will be delay in deciding the appeal if Court Commissioner is appointed.

3. On going through the entire material it is clear that the action taken by Tahsildar, Niphad is under challenged. Availability of alternate way is the question involved in the matter and therefore, Court Commissioner needs to be appointed to bring on record factual position. Appointment of Court Commissioner will help to resolve the controversy between the parties and his report will be helpful to both the parties. Ld. Advocate as per pursis Exh.37 prayed to appoint Advocate Shri. Sharad Chhaburao Wagh as Court Commissioner. It is important to note that the present respondents also in their application for Court Commissioner Exh.33 suggested the same name and therefore, it will be just and proper to appoint Advocate Shri. Sharad Chhaburao Wagh as Court Commissioner. Therefore, following order.

ORDER

- 1) Application Exh.34 is allowed as prayed for.
- 2) Advocate Shri. Sharad Chhaburao Wagh is appointed as Court Commissioner.
- 3) He is directed to give notice to all the concern parties and to their advocates and fix date of work of Court Commissioner.
- 4) He is directed to visit suit property as mentioned in the application and appeal memo and do the following work.
 - (a) To inspect the suit property and factual position.
 - (b) To inspect availability of alternate way as mentioned in

clause no.6 of the present application.

- (c) To draw photographs of alternate way and photographs of factual position of the suit property through camera and to do video recording and also through GPS map.
 - (d) To record the statements of panchas and concern parties in the appeal.
 - (e) To record statements of other persons if it is found required by the Court Commissioner.
 - (f) He is directed to do all the work as per prayer clause 12(A) and 12(B) of the present application.
- 5) Appellant to pay Rs.8,000/- (Rupees Eight Thousand Only) as Court Commission fees to the Court Commissioner, Advocate Shri. Sharad Chhaburao Wagh
 - 6) Appellant to incur all other expenses of photography, videography and allied expenses required for Court Commission work.
 - 7) Court Commissioner to submit his report along with panchanama, statements, photographs, video shooting in this Court on or before 08.04.2026.
 - 8) Issue writ accordingly to Advocate Shri. Sharad Chhaburao Wagh, Court Commissioner.
 - 9) Application is disposed off.

Place: Niphad

Date : 17.03.2026

District Judge-2
Niphad.