



WPMS No.93 of 2014

Hon'ble Lok Pal Singh, J.

Mr. Deepak Dhingra and Mr. Siddhartha Sah, Advocates for the petitioner.

Mr. J.P. Joshi, Additional Advocate General for the State.

A Coordinate Bench of this Court, vide order 28.03.2016, had appointed Mr. Bharose Lal as Advocate Commissioner on the proposal made by the petitioner. However, this court vide order dated 06.12.2018, observed that Mr. Bharose Lal was appointed Advocate Commissioner under some misconception that he is a former Judge of High Court and accordingly rejected the report submitted by Mr. Bharose Lal.

Now, learned counsel for the petitioner would press for miscellaneous application CLMA No.19659 of 2018 moved under Order 26 Rule 9 of C.P.C., whereby following prayer has been made:

“Pass necessary orders appointing any person as this Hon'ble Court may find suitable as Advocate Commissioner for the purpose of submitting with this Hon'ble Court a report concerning the issues as detailed in paragraph no.9 above or such other issues which the Hon'ble Court may deem fit and proper.”

Respondent no.4 has filed objections to the misc. application stating that the application moved under Order 26 Rule 9 CPC is not maintainable and Advocate Commissioner cannot be appointed to collect evidence in the writ petition.

Petitioner has filed its reply to the objections denying the averments made in the objection.

This Court finds that earlier when the Advocate Commissioner was appointed by the Court the respondents had extended their consent. Once consent has been extended by the respondents to appoint Advocate Commissioner, they cannot retract themselves from the same.



This Court requested the learned counsel for the parties to suggest names of any two senior lawyers of this Court who can be appointed Advocate Commissioners. Mr. J.P. Joshi, Additional Advocate General suggested the name of Mr. M.S. Tyagi, Senior Advocate. Besides Mr. M.S. Tyagi, Senior Advocate, this Court also thinks fit to appoint Mr. M.C. Kandpal, Senior Counsel as Advocate Commissioner. Learned counsel for both the parties has no objection to it. Mr. M.C. Kandpal and Mr. M.S. Kandpal, Senior Advocates are present and they have also agreed for the above proposal.

Advocate Commissioners shall visit the site and conduct inspection to ascertain the exact location of the pieces of land in dispute as also whether the property in dispute is situated in village Rakholi or is within the municipal limits of Mussoorie. In this regard, prior intimation shall be given by the learned Advocate Commissioners to the respective parties so that the parties can depute their officials to remain present on the date and time of inspection.

District Administration shall appoint any competent revenue official to assist the Advocate Commissioners.

Remuneration of ₹ 1,00,000/- each (in total Rs.2,00,000/-) is fixed which will be paid by the petitioner to the Advocate Commissioners.

Advocate Commissioners will submit the report within two weeks with advance copy to learned counsel for the parties.

List this matter after report is submitted.

Insofar as modification application CLMA No.19660 of 2018 is concerned, same is wrongly shown in the cause list as the same has already been disposed of.

(Lok Pal Singh, J.)

28.02.2020