

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1129 OF 2010

Sau. Shobha Vidyasagar Jadhav
[wrongly mentioned as Shobha Vithal Jadhav]
Age 32 years, Occu. Service,
(Presently working as Tahasildar,
Omerga), R/o. Omerga, Taluka Omerga,
Dist. Osmanabad.

....Petitioner.

Versus

1. The State of Maharashtra,
Through Police Station, Kallamb,
Taluka Kallamb, Dist. Osmanabad.

2. Shri. Ramkisan Bhaskarrao Dhongade,
Age 30 years, Occu. Agriculture,
R/o. At Wagholi (Gaur), Tal. Kallamb,
Dist. Osmanabad.

....Respondents.

Mr. Mukul S. Kulkarni, Advocate for petitioner.

Mr. V.D. Godbharle, APP for State.

WITH
CRIMINAL APPLICATION NO. 2516 OF 2011

Vasant s/o. Shankarrao Pawar,
Age 45 years, Occu. Service
as Tahsildar, Collector Office, Solapur
(under suspension)
R/o. Tambri Vibhag, Osmanabad,
Tq. and Dist. Osmanabad.

....Petitioner.

Versus

1. The State of Maharashtra,
through the Police Station, Kallamb,
Tq. Kallamb, Dist. Osmanabad.

....Respondent.

Mr. Ganesh V. Patil, Advocate for petitioner.

Mr. V.D. Godbharle, APP for State.

WITH
CRIMINAL APPLICATION NO. 860 OF 2011

Babruwan s/o. Ambadas Devkar,
Age 55 years, Occu. Nil
R/o. Tahsil Coloney, Kallamb,
Tq. Kallamb, Dist. Osmanabad.

....Petitioner.

Versus

1. The State of Maharashtra,
through the Police Station, Kallamb,
Tq. Kallamb, Dist. Osmanabad.
2. Ramratan Bhaskarrao Dhongde,
Age 30 years, Occu. Agril.,
R/o. Wagholi (Gaur), Tq. Kallamb,
Dist. Osmanabad.

....Respondents.

Mr. Ganesh V. Patil, Advocate for petitioner.

Mr. V.D. Godbharle, APP for State.

WITH
CRIMINAL WRIT PETITION NO. 1095 OF 2014

1. Nagurao s/o. Amrutrao Dhondgade,
Age 65 years, Occu. Agriculture,
R/o. Wagholi (Gaur), Tq. Kallamb,
Dist. Osmanabad.
2. Shahurao s/o. Amrutrao Dhondgade,
Age 55 years, Occu. Agriculture,
R/o. Wagholi (Gaur), Tq. Kallamb,
Dist. Osmanabad.
3. Bhajandas s/o. Amrutrao Dhondgade,
Age 52 years, Occu. Agriculture,
R/o. Wagholi (Gaur), Tq. Kallamb,
Dist. Osmanabad.
4. Nagnath s/o. Narayan Dange,
Age 60 years, Occu. Pensioner,
(Retired as Naib Tahsildar)
R/o. Kallam, Dist. Osmanabad.

5. Gokul s/o. Vishwanbhar Kapse,
Age 59 years, Occu. Pensioner,
(Retired as Mandal Officer)
R/o. Kallam, Dist. Osmanabad.**Petitioner.**

Versus

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Kallamb,
Tq. Kallamb, Dist. Osmanabad.
2. Ramratan s/o. Bhaskarrao Dhongade,
Age 35 years, Occu. Agriculture,
R/o. Wagholi (Gaur), Tq. Kallamb,
Dist. Osmanabad.**Respondents.**

Mr. V.D. Salunke, Advocate for petitioner.

Mr. V.D. Godbharle, APP for State.

Mr. S.G. Jadhavar, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**
DATED : 17th April, 2015.

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal in all the proceedings.

2) RCC No. 292/2010 is pending in the Court of Chief
Judicial Magistrate, Osmanabad against the petitioners. It is for
the offences punishable under sections 465, 466, 467, 471, 420,
197, 166, 167, 209, 198 and 34 of Indian Penal Code. Relief is

claimed for quashing of this case in all the proceedings.

3) The crime was registered on the basis of directions given by C.J.M., Osmanabad in a private complaint filed by respondent No. 2. Complainant and witness Nos. 1 and 2 have purchased the land survey No. 9 (old) which is given Gat No. 14 during consolidation and which is situated at village Wagholi, Tahsil Kallamb. This land was initially standing in the name of Krushnabai. Accused No. 4 - Vijaysingh Deshmukh was adopted by Krushnabai. Vijaysingh sold this land to Kerba Gadhve, witness, under registered sale deed in 1991. Kerba sold this land to one Sontakke in the year 2002 and from Sontakke, the complainant purchased the land in the year 2003. It is the case of complainant that when he purchased the land, he had verified that the vendor had the clear title and nobody had right of tenancy in respect of this land.

4) It is the case of complainant that behind his back, the original owner - Vijaysingh Deshmukh, accused No. 4 and the persons like Bhajandas Dhongade, Shahurao Dhongade and Nagurao Dhongade joined hands and they also induced the revenue officers and they created false record to show that Amrutrao Dhongade, the predecessor of Bhajandas, Shahurao

and Nagurao was protected tenant of this land. He has made allegations that the revenue officers made false entry in the record for illegal consideration and some orders were also made. It is contended that In the register of tenants, this land was added to show that Amrutrao Dhongade was tenant in Survey No. 9 and so, he was entitled to purchase the land under the provisions of Hyderabad Tenancy and Agricultural Lands Act, 1950. He has contended that behind his back, the tenancy proceeding was started in the year 2003 by these persons and orders were obtained. It is contended that accused No. 8, Tahsildar had knowledge that there was no record of tenancy in favour of Amrutrao, but he made order. It is contended that everybody knew that complainant had purchased the land, but behind his back, the proceeding was conducted. In view of these allegations, direction was given by C.J.M., Osmanabad to make investigation. Police have made investigation and chargesheet is now filed for aforesaid offences.

5) Copy of order made by the Tenancy Court, one of the accused, on 18.8.2003 is produced and it shows that complainant was not party to the proceeding. The order shows that the previous owner - Vijaysingh Deshmukh admitted that predecessor of Bhajandas etc. viz. Amrutrao was tenant in the

land when Hyderabad Tenancy and Agricultural Lands Act, 1950 came in force. In view of such submissions by the owner and on the basis of entry made in tenancy register in respect of Survey No. 9, the Tenancy Court, one of the accused, declared applicants Bhajandas etc., legal representatives of Amrutrao as tenants and further declared that they were entitled to purchase the land under the provisions of Tenancy Act and directed to issue certificate after payment of occupancy price. It appears that even the sale deed executed in the year 2003 was held to be invalid when complainant was not party to that proceeding.

6) There is the record to show that Bhajandas had dispute with Kerba. Bhajandas had contended that Kerba had made agreement of sale with him and due to that, he was entitled to purchase the land. He had also contended that Kerba had given possession to him and so, he was in possession. During hearing of R.T.S. proceeding, Bhajandas filed affidavit to the effect that he had resolved the dispute with Kerba and he was not claiming any kind of right as against Kerba. In a suit filed by him also, similar submissions were made by him. Copy of agreement is also on the record and it shows that it was signed by brother of Bhajandas. The sale deed which was executed in favour of Kerba by the original owner shows that legal

representative (Shahurao) of Amrutrao had signed as witness on the sale deed. Admittedly, Bhajandas had given up the claim of right to purchase the land from Kerba. These circumstances are sufficient to infer that legal representatives of Amrutrao like Bhajandas, Shahurao and Nagurao were not claiming that they or their predecessors were protected tenants in disputed land. It appears that when the complainant got knowledge about the aforesaid activities, he approached the revenue authority. Inquiry was then made and during inquiry, it was revealed that Survey No. 9 was added in the register of tenancy subsequently. In support of this report, there is other record like declaration made in favour of tenants in respect of land in their possession. This record shows that Amrutrao and his brother Krushnabapu were declared as tenants in respect of land Survey No. 10 which was also belonging to the same owner. Thus, there was no declaration in respect of Survey No. 9 at the relevant time. The other revenue record is also not in favour of Amrutrao or his successors. In ordinary course, if there was declaration in favour of Amrutrao with regard to Survey No. 9 that he was protected tenant, his name would have been there in the revenue record like 7/12 extract, but such entry was not there. The record shows that not only survey number was added, but the overwriting was done on the total area shown of survey numbers for which

declaration was made and this circumstance and aforesaid circumstances are sufficient to infer that false record was created.

7) Fortunately, the authority has cancelled the entry which was made in favour of Amrutrao and the orders made in respect of this land which are quoted above are already cancelled. The aforesaid record and circumstances show that the revenue officers have also helped the heirs of Amrutrao Dhongade for getting the aforesaid orders and for showing the entries in the relevant record. The clerk, who is in custody, is made accused. The Tahsildar, who gave order is also made accused and the material is sufficient to make out prima facie case for aforesaid offences against them.

8) So far as the case of subsequent Tahsildar - Shobha Jadhav, who is petitioner in Criminal Writ Petition No. 1129/2010 is concerned, it can be said that she joined the duty subsequently. As the first order made in favour of legal representatives of Amrutrao, which is dated 20.12.2003, there is mention of entry in the tenancy register in favour of Amrutrao, it cannot be inferred that the petitioner Shobha Jadhav was party to the aforesaid mischief. There is allegation against her that she

did not take steps when the complainant approached to bring to her notice the aforesaid mischief. In that regard, it can be said that even the order made by the Tenancy Court was confirmed in appeal and this circumstance was there for Shobha Jadhav to presume that she can do nothing in this regard. Criminal intention, however, cannot be gathered from such inaction of Shobha Jadhav. Only due to the circumstance that she joined the duty on 1.4.2005 i.e. after creation of false record, this Court holds that relief needs to be given to her.

9) In the result, Criminal Writ Petition No. 1129/2010 is allowed. RCC No. 292/2010 filed before the Chief Judicial Magistrate, Osmanabad as against the petitioner Shobha Jadhav is hereby quashed and set aside to her extent only. Rule is made absolute in aforesaid terms in this proceeding.

10) The other proceedings are dismissed. Rule is discharged in those proceedings.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/