

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 992 OF 2015

SAROJ W/O JAGDISHCHANDRA JAJU
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

...

Advocate for Petitioners : Mr. Swapnil S. Rathi.
APP for Respondents/State : Mr. B. L. Dhas.

CORAM : S.S. SHINDE & A.M. BADAR, JJ.
DATE : 27th AUGUST, 2015.

PER COURT:

1] Heard.

2] Rule. Rule made returnable forthwith with the consent of parties.

3] It is the case of the petitioner that the dispute pertains to land Survey No. 615 from Ambejogai, Dist. Beed. There is a civil dispute between the parties and civil suit i.e. R.C.S. No. 75 of 2015 is pending before the Civil Judge Senior Division, Ambejogai. It is further the case of the petitioner that on 13.1.2011, the learned Civil Judge Senior Division, Ambajogai, was pleased to dismiss the RCS No. 164 of 2009 filed by the Ambejogai Taluka Sahakari Kharedi Vikri Sanstha, thereby refusing the prayer for declaration of ownership and injunction. Again, the same plaintiff who filed earlier suit bearing RCS No. 164/2009, filed RCS No. 75/2015, praying for relief of declaration and ownership, wherein, the present petitioner is defendant. In

the said suit, said plaintiff filed an application for temporary injunction. Another application below Exhibit 28 was also filed praying for an order of status-quo against the defendant herein. However, by order dated 2.5.2015, the concerned court was pleased to reject the application praying for status-quo against the present petitioner and others. On 1.7.2015, the respondent No.3 herein, issued notice under Section 149 of Cr.P.C. against the present petitioner thereby restraining him from entering in the suit premises.

4] Learned counsel for the petitioner submits that the civil suit instituted by the Ambajogai Taluka Sahakari Kharedi Vikri Sanstha, Ambajogai is pending wherein the competent civil court has refused the prayer of the said sanstha for grant of status-quo and restraining the petitioner from entering in the suit premises. As such, the Assistant Police Inspector, Police Station, Ambajogai (city) has no jurisdiction or legal authority to issue notice under Section 149 of Cr.P.C. Therefore, the counsel for petitioner submits that the petition deserves to be allowed.

5] On the other hand, learned APP submits that petitioner was trying to interfere in the peaceful possession of the Ambajogai Taluka Sahakari Kheredi Vikri Sanstha and, therefore, in order to avoid any further complications, notice under Section 149 of Cr.P.c. was issued by the Assistant Police Inspector of Police Station, Ambajogai to the petitioner.

6] We have heard the counsel for petitioner, learned APP for the State, perused the entire material placed on record. Upon perusal of

Annexure B at Page 24 of the complication of the writ petition, It appears that the Ambajogai Taluka Sahakari Kharedi Vikri Sanstha filed RCS No. 75 of 2015, wherein, present petitioner is defendant No.1. Upon perusal of Exhibit E at page 40 i.e. copy of Exhibit 28, application filed by said Sanstha, praying therein for maintaining status-quo in respect of the suit property and order passed by the said Court on 2.5.2015, refusing the said relief on the ground that the application for temporary injunction at Exhibit 5 is under consideration, wherein, already notices are issued to the defendants. In the light of the above, in our opinion, when the matter is pending before the competent Civil Court, notice by the API, Police Station Ambajogai to the petitioner was not warranted and the same is illegal.

7] In the result, writ petition is allowed in terms of prayer clause (C) . Same stands disposed of. However, we make it clear that observations made hereinabove, are only for the purpose of deciding the present petition and cannot be used in any other proceeding pending before any other forum. Rule is made absolute in above terms. No costs.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-