

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL WRIT PETITION NO.: 1560 OF 2014

Shashikant Bhurya Kokani,
Age: 48 years, Occ. Agriculture,
R/o Shravani, Tal. Navapur,
District: Nandurbar.

... **PETITIONER.**

VERSUS

1. **The State of Maharashtra.**
Through Department of Home Affairs,
Mantralaya, Mumbai 400 032.
2. **The Superintendent of Police,**
Nandurbar, Taluka and Dist.
Nandurbar.
3. **Police Inspector,**
Visarwadi Police Station,
Taluka Navapur, Dist. Nandurbar.
4. **Somansing Babji Kokani,**
Age: 65 years, Occ. Agriculture,
R/o Shravani, Tal. Navapur,
Dist. Nandurbar.
5. **Prabhu Somansing Kokani,**
Age: 24 years, Occu.: Agriculture,
R/o Shravani, Tal. Navapur,
Dist. Nandurbar.
6. **Ramesh Pratapsing Kokani,**
Age: 45 years, Occu. Agriculture,
R/o Shravani, Tal. Navapur,
District Nandurbar.
7. **Ashok Pratapsing Kokani,**
Age: 42 years, Occ. Agriculture,
R/o Shravani, Tal. Navapur,
Dist. Nandurbar.

8. **Brijlal Shravan Kokani,**
Age: 62 years, Occ. Agriculture,
R/o Shravani, Tal. Navapur,
Dist. Nandurbar.

... **RESPONDENTS**

Advocate for the Petitioner: Mr. D. P. Palodkar.
APP for Respondent Nos.1 to 3: Mr. K. M. Suryawanshi.
Advocate for Respondent Nos.4 to 7: Mr. S. S. Nirkhee.
Advocate for Respondent No.8: Mr. Ruchir Wani.

**CORAM:- T. V. NALAWADE &
SMT. I. K. JAIN, JJ.
DATED:- 27th MARCH, 2015.**

ORAL JUDGMENT:

1. Heard learned counsel for the parties.
2. Rule. By consent of the learned counsel for parties, rule is made returnable forthwith and this petition is being heard and decided finally.
3. This petition under Article 226 of the Constitution of India has been filed by the Petitioner praying for issuance of appropriate writ for quashing and setting aside the notice dated 8th November, 2014 issued by Respondent No.3 purporting to have been issued under the provisions of section 149 of the Code of Criminal Procedure. The other relief which the petitioner has prayed is for issuance of direction to Respondent No.2 to provide him adequate police protection for cultivating agricultural lands Gat Nos.3A, 3B, 196/1 and 203/1, situated at village Shravani,

Taluka Navapur, District Nandurbar.

4. The brief facts which are necessary for the decision of this petition are stated herein below:

Chapibai adopted Ramdas Sakharam Kokani by way of registered adoption deed. In view of adoption agricultural lands situated in Gat Nos.3A, 3B, 196/1 and 203/1 at village Shravani, Taluka Nevapur, District Nandurbar came to his possession. He became the owner and he was cultivating the same. Petitioner and his family members are claiming through Ramdas Sakharam Kokani.

After the demise of Chapibai other relatives started obstructing the possession of Ramdas and therefore Regular Civil Suit No.33 of 1985 came to be filed. Respondent Nos.4 to 8 filed counter claim for partition and separate possession in the suit instituted by Ramdas. They also filed Regular Civil Suit No.9 of 1986 for partition and separate possession. The trial Court dismissed the suit filed by Ramdas and claim for partition made by Respondent Nos.4 to 8 and other legal heirs came to be decreed.

5. The judgment and decree in both the suits came to be assailed before the first Appellate Court. The same were confirmed in the first appeal.

6. The second appeal Nos.229 of 2002 and 230 of 2002 were then filed by legal heirs of Ramdas against dismissal of suit for declaration and injunction and decreeing claim of partition and separate possession of Respondent Nos.4 to 8 and others. On 21st February, 2010 second appeals came to be admitted by this Court and execution of decree was stayed.

7. It is the case of petitioner that he and his family members are in lawful and peaceful possession of the disputed property. Respondent Nos.4 to 8 tried to take forcible possession with police aid. Respondent No.3 and officers of police station helped Respondent Nos.4 to 8 in their attempt of taking forcible possession.

8. According to petitioner he submitted representations dated 11th August, 2007 and 23rd November, 2014 to Respondent No.2 to take suitable action. A grievance is made that Respondent No.2 did not take any action. On the contrary Respondent No.3 issued impugned notice (Annexure-F) to the Petitioner in anticipation of breach of piece. It is alleged that notice is issued under political and economical pressure of Respondent Nos. 4 to 8. Petitioner submitted that with the help of police Respondent Nos.4 to 8 have assaulted him and his family members and they are

trying to take forcible possession.

9. It is the contention of petitioner that Respondent No.3 has no authority and jurisdiction to issue notice under section 149 of Code of Criminal Procedure and Respondent No.3 is not justified in withholding the representations dated 11th August, 2007 and 23rd November, 2014.

10. The question which is posed before us is in respect of jurisdiction of Respondent No.3 to issue notice which is in reality an injunction restraining the petitioner from cultivating his agricultural lands thereby affecting the civil rights of the parties.

11. Section 149 of Criminal Procedure Code empowers every police officer to interpose for the purpose of preventing and, to the best of his ability, prevent the commission of any cognizable offence. Otherwise also, according to us, section 149 Cr.P.Code does not vest police officer in the exercise of jurisdiction under section 149 Cr.P.C. to issue blanket order of injunction prohibiting any party from entering into the agricultural land. In our considered opinion, Respondent No.3 would not have issued impugned notice injecting the petitioner, more so when the appeals are pending adjudication. We are of the opinion that impugned notice (Annexure-F) issued by

Respondent No.3 is unsustainable in law.

12. Respondent No.2 ought to have decided representations dated 11th August, 2007 and 23rd November, 2014 [Annexures (I) and (B)] submitted by the Petitioner. So far as issuance of writ of mandamus or any other appropriate writ to provide police protection to the petitioner is concerned, we are not inclined to grant the said relief to the Petitioner. He is at liberty to take recourse to law in that regard.

13. In view of the above, Rule is made absolute in terms of prayer clauses (B) and (C). Rule stands discharged in terms of prayer clause (D) with no order to costs.

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

[T. V. NALAWADE, J.]

Dated:13/03/2015.
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