

SS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4056 OF 2014

Nelson Albert D'Cruz, Partner of
M/s. Sweet Angel Home Builders and ors.Petitioners
versus
State of Maharashtra and ors.Respondents

Mr. A. P. Mundargi, senior counsel along with Mr. S. V. Marwadi i/b. Ms.
Mallika A. Ingale, advocate for the petitioners.
Mrs. U. V. Kejriwal, APP for the State.
Mr. Mobin Solkar i/b. Mr. A. M. Landge, advocate for respondent No.5.

**CORAM : RANJIT MORE &
M. S. SONAK, JJ.**

DATED : 4TH AUGUST, 2015.

P.C.:

Heard Mr. Mundargi, learned senior counsel for the petitioners,
Mrs. Kejriwal, learned APP for the State and Mr. Solkar, learned counsel
for respondent No.5.

2. The petition is filed under Article 226 of the Constitution of India for quashing the FIR bearing CR No. 294 of 2014 registered with Amboli Police Station, at the instance of respondent No.5, for the offences punishable under Sections 141, 143, 145, 147, 149, 447, 427 506(2) read with Section 34 of the Indian Penal Code, 1860.

3. There is no dispute that the land bearing CTS No.732 and 732/1 to 15 belongs to four persons including one Dhotre-the predecessor-in-

title of respondent No.5. Mr. Dhotre gave some portion of the land to Mr. Masuldar for the purpose of weighbridge on leave and license basis. Mr. Dhotre subsequently sold his share in the said property to respondent No.5 under conveyance deed dated 28th December, 2013. Mr. Mundargi, learned senior counsel submitted that the conveyance deed reveals that the possession of the property under the sale deed was given to respondent No.5 by Mr. Dhotre after removal of weighbridge.

4. The FIR is registered at the instance of respondent No.5 on 28th August, 2014. The FIR reveals that respondent No.5 had purchased the land admeasuring 1003.25 square metres out of CTS Nos. 732 and 732/1 to 15 situated at Oshiwara Village, Andheri West, Mumbai from Shri Dhotre. The FIR reveals that respondent No.5 permitted the said Masuldar to run weighbridge. The FIR further reveals that in the month of March 2014, after having taken possession of the said land, when respondent No.5's employees were carrying the work of fencing, some of the petitioners and their accomplices came there and threatened them not to carry out said work. The petitioners and their accomplices again threatened respondent No.5's employees on 23rd July, 2014, 24th July, 2014, 25th July, 2014, 30th July, 2014. Similarly, on 2nd August, 2014, the petitioner No.1 along with his daughter came in Innova Car on the site of land which respondent No.5 had purchased and damaged the cloth canopy. Again on 4th August, 2014, the

petitioners along with their accomplices damaged the weighbridge, threatened the security guards of respondent No.5 and parked one mini bus in the said land. In the light of allegations, the FIR is registered under the provisions of the Indian Penal Code, 1860 against the petitioners.

5. Mr. Mundargi submitted that the land, on which, the trespass is alleged to have been committed by the petitioners, in fact belongs to the petitioners. In this regard, he submitted that in conveyance deed, it is shown that the weighbridge is removed from the portion of land which respondent No.5 has purchased. He submitted that the weighbridge was again constructed/installed in the petitioners' land bearing CTS No.737/8/1 and, therefore, the petitioners cannot be said to have committed trespass on their own land.

6. The submission of Mr. Mundargi cannot be accepted. The allegations made in the FIR will have to be taken on its face-value. The veracity of the allegations made in the FIR cannot be gone into at this stage. The FIR does show that the weighbridge belonging to Masuldar was there on the land bearing CTS No.732 and 732/1 to 15. There is no dispute that Masuldar was permitted to run this weighbridge by predecessor-in-title of respondent No.5. Though, it is mentioned in the conveyance deed dated 28th December, 2013 that weighbridge is removed, but the FIR alleges that it was not removed and respondent

No.5 permitted Masuldar to run the weighbridge. The FIR discloses that the petitioners and their persons trespassed the suit property and threatened respondent No.5's security guards.

7. Mr. Solkar, learned counsel for respondent No.5, at this stage, submitted that already a suit is filed by respondent No.5 against the petitioners in the civil court and temporary injunction is already granted in favour of respondent No.5 and against the petitioners in respect of CTS No.732 and 732/1 to 15. This submission is not controverted by Mr. Mundargi. When the civil dispute between the parties is pending, the petitioners cannot be permitted to take law into their hands and take forcible possession of the property.

8. Learned APP submitted that investigation is completed and only charge-sheet has remained to be filed and the same could not be filed in view of interim order passed by this Court. Since the FIR prima-facie discloses commission of cognizable offence, we are not inclined to entertain the petition, especially when the petitioners have an alternative efficacious remedy to apply for discharge before the trial court. In the circumstances, the petition stands dismissed.

(M. S. SONAK, J.)

(RANJIT MORE, J.)