

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRI. WRIT PETITION NO. 3346 OF 2011**

|                                       |   |                 |
|---------------------------------------|---|-----------------|
| Shri Vithal Ramchandra More,          | ) | ... Petitioner. |
| Aged 75 yrs.,r/a.17-C,Kalimata Co-op. | ) |                 |
| Hsg.Society, Shiv-Shrusthi,           | ) |                 |
| Kurla (E), Mumbai.                    | ) |                 |

V/s.

|                                    |   |                  |
|------------------------------------|---|------------------|
| 1. The State of Maharashtra        | ) |                  |
| (at the instance of Chembur Police | ) |                  |
| Station, Mumbai).                  | ) |                  |
| 2. Smt. Alka Pandurang Kadam,      | ) |                  |
| R/at. Suman Nagar,Near Sitaram     | ) |                  |
| Stores, Chembur, Mumbai-400 071.   | ) | ... Respondents. |

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Mr. Prakash Naik Advocate for the Petitioner.

Ms. V. S.Mhaispurkar, APP for the State.

Mr. Rupesn Bhalshankar and Sheetal Pawar, Advocate for Respondent No.2.

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**CORAM : M.L.TAHALIYANI,J.**

**DATE : 09<sup>th</sup> JULY, 2015**

**P.C. :**

1            This criminal writ petition impugns the order passed by the Sessions Court in criminal revision application 946 of 2010. The revision application was filed by respondent no. 2-Smt. Alka Pandurang Kadam, challenging the order passed by the learned Additional Chief Metropolitan Magistrate

in Case No. 102/MISC-2009 under section 145 of the Criminal Procedure Code.

2           The proceedings were filed in the court of Metropolitan Magistrate by the Senior Police Inspector, Chembur Police Station against the petitioner-Vithal and respondent No.2-Alka alleging that there was a dispute in respect of Room No.6, situated at Suman Nagar, Chembur, Mumbai and that it was likely to cause breach of peace. The learned Magistrate passed preliminary order and initiated the enquiry. At the conclusion of the enquiry, the learned Magistrate came to the conclusion that the petitioner-Vithal More was in possession of the property and he was forcibly dispossessed within two months next before the date of initiation of the proceedings. He, therefore, passed consequential orders. The order of the learned Magistrate had been set aside by the learned Sessions Judge on the ground that the petitioner could not prove that he was in actual physical possession of the premises in question.

3           The case of the petitioner before the learned Magistrate was that he had purchased the premises in question from one Pandurang Sitaram Kadam, the husband of respondent no. 2 on 31<sup>st</sup> July, 2006. It was his case that one Mr. Sachin Kasare was the tenant of the said premises. It was also his case that one Mr. Sanjay Manjrekar was in actual

physical possession of the premises when he (the petitioner) was dispossessed forcibly by respondent no.2 and her family members. The case of respondent no.2 before the trial court was that the premises were never sold to the petitioner and that the petitioner had created a false case with the help of the police, as two close relatives of the petitioner are in police department. During the course of the hearing it has transpired that the petitioner had examined Mr. Kasare but he had not examined Mr. Sanjay Manjrekar. It has also transpired that respondent no.2 had not examined her husband, who claims to be the owner of the property. As such the application had been decided by the learned Magistrate without there being vital evidence on record which could have been necessary for just and proper decision of the issue in question.

4           The learned Magistrate was not supposed to simply record the evidence of the witnesses produced by the parties but it was obligatory on the part of the Magistrate to examine the witness whose evidence was necessary to decide the issue in question. In this regard one may refer to section 145 (4) Of the Criminal Procedure Code :-

145. Procedure where dispute concerning land or water is likely to cause breach of peace .---

- (1)     .....
- (2)     .....

(3) ..... ..

(4) The Magistrate shall then, without reference to the merits or de-merits of the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute :

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

5 It was thus imperative on the part of the Magistrate to see whether any evidence was necessary to decide as to who was in the actual physical possession of the premises on the relevant date. The Magistrate failed to take any steps to examine the husband of respondent no.2 and he has further failed to take steps to summon Sanjay Manjrekar and examine him to ascertain whether he was in actual physical possession on the date of the incident and as to

whether he was dispossessed by respondent no. 2 and/or her family members.

6           In these circumstances, the orders passed by the learned Magistrate and the learned Sessions Judge are set aside. The matter is remanded back to the learned Magistrate for holding further enquiry during which he shall take all necessary steps to examine Sanjay Manjrekar and husband of respondent no.2. He may also take any other evidence, in his opinion, necessary to decide the issue in question. It is made clear that the evidence already on record shall remain the same. There is no necessity to re-examine the witnesses already examined by the Magistrate. The learned Magistrate shall pass fresh orders after complying with the directions issued herein-above.

7           The enquiry shall be completed within a period of two months from the date of receipt of authenticated copy.

8           The writ petition stands disposed of in the above terms.

9           The learned counsel for respondent no.2 prays for grant of stay of this order. In my opinion, the order does not cause any prejudice to any of the parties. Respondent No.2 is already in possession of the premises. As such her possession is

also not being disturbed by the present order. Hence, there is no necessity to grant stay. The prayer is rejected.

10 Parties to appear before the learned Magistrate on 28<sup>th</sup> July, 2015.

(JUDGE)

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