

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 548 OF 2007

1. Sopan s/o Jagannath Dhakane
Age 55 years, Occ. Service
R/o. Wadgaon Dhok, Tq. Georai
District Beed.
2. Vitthal s/o Sopan Dhakane,
Age 25 years, Occ. Agriculture
R/o. Wadgaon Dhok, Tq. Georai
district Beed.
3. Arjun s/o Sitaram Dhakane
Age 52 years, Occ. Agriculture
R/o. Wadgaon Dhok, Tq. Georai
district Beed.
4. Krushna s/o Arjun Dhakane
Age 25 years, Occ. Agriculture
R/o. Wadgaon Dhok, Tq. Georai
district Beed.

...Petitioners

versus

1. S.L. Bhillare
Age 40 years, Occ. Service
Police Head Constable, Georai
Police Station, Georai,
District Beed.
2. The Police Inspector,
Georai Police Station,
Georai, District Beed
3. The District Superintendent of
Police, Beed, district Beed
4. The State of Maharashtra
(Copy to be served on P.P.
High Court of Bombay
Bench at Aurangabad)

...Respondents

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Mr. S.V. Dixit h/f Mr. A.N. Nagargoje, advocate for petitioners
Mr. A.R. Kale, A.P.P. For the respondents
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CORAM : V. K. JADHAV, J.
DATED : 26th AUGUST, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the notice/order passed by the Police Station Officer, Police Station, Georai, dated 29.9.2006, the petitioners have filed this writ petition.

2. Brief facts giving rise to the present writ petition are as under:-

a) The father of petitioner No.1 had purchased suit land bearing survey No. 95 and Gat No. 277 admeasuring 2 Acres and 7 R situated at village Wadgaon Dhok, Tq. Georai, District Beed, under registered sale deed from one Prayadgabi on 16.1.1967 for valuable consideration. The father of the petitioner No.1 remained in possession of the said land and after his death, petitioner No.1 and his other family members are in possession of the land and cultivating it personally. On the basis of said registered sale deed, mutation entry No. 624 came to be recorded in the revenue record and after death of father of petitioners; mutation entry came to be sanctioned in favour of petitioner No.1. However,

on 30.9.1988, one Narayanrao Borde, who is son of original vendor, instituted R.C.S. No. 378 of 1988 challenging therein the legality and validity of the sale deed and mutation entry. However, in the year 1994, the said suit came to be withdrawn with liberty to file fresh suit. However, thereafter, said Narayan has not instituted any suit. On 28.4.2004, after a period of 22 years from the date of effecting the said mutation entry, said Narayan Borde filed appeal before the Sub Divisional Officer challenging the said mutation entry. The Sub Divisional Officer and learned Additional District Collector decided the matter against the petitioners.

b) Being aggrieved by the same, the petitioners had approached the Additional Commissioner by preferring Revision and the learned Additional Commissioner has directed the parties to maintain status quo till further orders. The said appeal was pending till the impugned order is passed by the police. On 29.9.2006, as aforesaid, the respondent No.1 has passed order purported to be under Section 149 of Cr. P. C. directing petitioner Nos. 1 and 2 not to enter into the suit land. Hence, this writ petition.

3. Learned counsel for the petitioners submits that respondent

No.1 has no authority to pass an order and there is no provision under Section 149 of Cr.P.C. to pass such order. By passing such order, the Police Station Officer, Georai has prevented the petitioners to enter in the field without any basis. The said order, being illegal, is liable to be quashed and set aside.

4. I have also heard the learned A.P.P. for the respondents.

5. Chapter X of Cr.P.C. speaks about maintenance of public order and tranquility. So far as the dispute as to the immovable property is concerned, the procedure is contemplated under Sections 145 to 148 of Cr.P.C.. So far as the Chapter XI of Cr.P.C. is concerned, the police by invoking powers under Section 149 of Cr.P.C. may interpose for the purpose of preventing any breach and shall to the best of his ability, prevent the commission of any cognizable offence. In the case in hand, I do not find any such contingency as contemplated under Section 149 of Cr.P.C. It is nowhere stated in the notice/order dated 29.9.2006 that upon receiving the complaint from any person, the police intends to interpose for the purpose of preventing the commission of cognizable offence and for that purpose the petitioners have been directed not to enter in the field. In absence of any such material, the order impugned is improper, incorrect and illegal. Hence, I proceed to

pass the following order:-

O R D E R

- I. Writ petition is hereby allowed in terms of prayer clause "A".
- II. Writ petition is accordingly disposed of. Rule is made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/