

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.12551 OF 2015**Inderlal S/o Tulsomal Kamora Vs. The State of Maharashtra
and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.A.H.Kasliwal, advocate for the Petitioner.
Mr.B.V.Virdhe, A.G.P. for the State.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**
Date : 26.10.2016.

PER COURT :

1. Heard.
2. Mr.Kasliwal, learned counsel submits that Gat No.125 situated at Taroda (Kh.) admeasuring 5 acres was handed over to the 3rd Respondent i.e. Tahsildar, Nanded in the proceedings U/s 145 of the Cr.P.C. The Tahsildar appointed the Receiver. It is the duty of the Receiver to safeguard the property. The said proceedings U/s 145 of the Cr.P.C. are not terminated and the possession is with Respondent No.3. Illegal construction is being carried out in the premises which were given in possession of Respondent No.3 U/s 145 of the Cr.P.C. Various correspondence

placed on record would show the illegal construction being carried out. The Executive Engineer (Construction), North Department, Zilla Parishad, Nanded also brought this fact of illegal construction being carried out on the said land to the Respondent No.3 but no cognizance is taken thereto. The said Executive Engineer had also brought it to the notice of the Commissioner of Municipal Corporation, Nanded that the dispute in respect of Gat No.125 is pending before the Courts and also before the Apex Court, however, no cognizance has been taken in respect of the same. The learned counsel submits that even the Apex Court has passed an order of statusquo on 17.10.2016. The learned counsel further submits that even recently the Tahsildar has also issued letter on 20.10.2016 to the Naib Tahsildar, intimating him to take steps to stop the excavation and construction in Gat No.125 which is given in his possession U/s 145 of the Cr.P.C. The learned counsel further submits that the photographs on record would show the large scale construction activity in progress on the said land. According to the learned counsel, the petitioner is concerned with 23 Ares land from said Gat No.125. The petitioner is seeking protection only of that property which is subject matter of proceedings U/s 145 of the Cr.P.C. The Zilla Parishad has refused to take possession of the said land inspite of the orders of the Taluka Executive Magistrate and the same is in possession of the

State.

3. Learned A.G.P. submits that on 25.10.2007 proceedings U/s 145 of the Cr.P.C. have been culminated and on 25.10.2007, order is passed by the Taluka Executive Magistrate to give that property in possession of Zilla Parishad. The learned A.G.P. submits that the petitioner has filed civil suits, wherein the petitioner could not succeed in getting injunction in respect of 23 Ares land. The said rejection of application for temporary injunction is confirmed upto this Court.

4. The land Gat No.125 admeasures 5 acres. The land subject matter of proceedings U/s 145 of the Cr.P.C. was to the extent of 3 acres 20 gunthas from Gat No.125. Under order dated 22.6.1995, Taluka Executive Magistrate, Nanded had passed the order of taking property from Gat No.125 in possession of State as per the boundaries specified in the said order. In the body of the order the area of the land under dispute was referred to as 3 acres 20 gunthas. According to the petitioner, his land admeasuring 23 Ares falls within the boundaries as detailed in the order U/s 145 of the Cr.P.C.

5. It would appear that the petitioner had filed Civil suit in respect of said 23 Ares land before the Civil Court in the year 2009 along with an application for temporary injunction. The said application for temporary injunction is rejected. Misc.Appeal filed by the petitioner is dismissed and Writ Petition filed against the

said order bearing W.P.No.4687/2016 is dismissed as withdrawn. The petitioner could not succeed in getting injunction in respect of 23 Ares land. It is submitted that the said suit, wherein the application for temporary injunction is rejected is still pending. The petitioner may agitate his grievance in the said suit.

6. The order dated 20.10.2007, passed by the Taluka Executive Magistrate releasing the land to the extent of 3 acres 20 gunthas which was in possession of the State was directed to be given in possession of Zilla Parishad i.e. the land which was subject matter of proceedings U/s 145 of the Cr.P.C. There is no order of competent authority or Court setting aside the said order dated 25.10.2007 though it is submitted by the petitioner that the Revision against the said order is subjudice.

7. The learned counsel submits that in the Revision filed against the Taluka Executive Magistrate, the Additional Sessions Judge, Nanded has passed order of statusquo and the same is continued. The said Criminal Application No.188/2007 is pending.

8. The petitioner is at liberty to make such application in the pending Revision as may be permissible.

9. Considering the aforesaid conspectus of the matter, this Court can not come to the aid of the petitioner. In view of that, the Writ Petition is dismissed. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.26.10.2016.
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