

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

**CONTEMPT PETITION NO.508 OF 2016
IN
CRIMINAL WRIT PETITION NO.274 OF 2016**

Baburao Ganpat Gite,
age 85 years, Occ. Agriculture,
R/o. Ashwi (Khurd),
Tal. Sangamner, Dist. Ahmednagar **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Ashwi Police Station,
Tal. Sangamner, Dist. Ahmednagar.
2. The Superintendent of Police,
Ahmednagar,
Dist. Ahmednagar.
3. The Police Inspector,
Ashwi (Khurd) Police Station,
Tal. Sangamner, Dist. Ahmednagar.
4. Keru s/o.Devram Mali,
age 53 years, Occ. Labour,
R/o. Ashwi (Khurd) Police Station,
Tal. Sangamner, Dist. Ahmednagar.
5. Laxman s/o. Devram Mali,
age 49 years, Occ. Labour,
R/o. Ashwi (Khurd) Police Station,
Tal. Sangamner, Dist. Ahmednagar.
6. Ashok s/o. Devram Mali,
age 47 years, Occ. Labour,
R/o. Ashwi (Khurd) Police Station,
Tal. Sangamner, Dist. Ahmednagar.

7. Shakuntala w/o. Bhanudas Barde,
age 51 years, Occ. Housewife,
R/o. Ashwi (Khurd) Police Station,
Tal. Sangamner, Dist. Ahmednagar.
8. Suman w/o. Kadu Barde,
age 46 years, Occu. Housewife,
R/o. Ashwi (Khurd) Police Station,
Tal. Sangamner, Dist. Ahmednagar.
9. Gayabai w/o. Keru Mali,
age 50 years, Occ. Household,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.
10. Adinath s/o. Keru Mali,
age 28 years, Occ. Labour,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.
11. Sangita d/o. Adinath Mali,
age 22 years, Occ. Household,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.
12. Alka w/o. Laxman Mali,
age 53 years, Occ. Household,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.
13. Bhima s/o. Laxman Mali,
age 32 years, Occ. Labour,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.
14. Archana w/o. Bhima Mali,
age 28 years, Occ. Household,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.

15. Gufa w/o. Ashok Mali,
age 51 years, Occ. Labour,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.
16. Bajrang s/o. Ashok Mali,
age 34 years, Occ. Labour,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.
17. Sarang s/o. Ashok Mali,
age 32 years, Occ. Labour,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.
18. Kadu s/o. Dashrath Barde,
age 53 years, Occ. Labour,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.
19. Indu w/o. Shivaji Barde,
age 27 years, Occ. Household,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.
20. Yogesh Kamale,
age major, Occ. Service,
At present working as Police Inspector,
R/o. Ashwi (Khurd) police Station,
Tal. Sangamner, Dist. Ahmednagar.

RESPONDENTS

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Mr.D.P.Palodkar, Advocate for the Petitioner
Mr.S.Y.Mahajan, Addl.P.P. for the Respondent
Nos.1 to 3/State
Mr.K.N.Shermale, Advocate for respondent nos.
4 to 19.

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 23.02.2017
Pronounced on : 02.03.2017

ORDER: (Per S.S.Shinde, J.):

1. This Contempt Petition alleges willful disobedience of the order passed by the Division Bench [Coram: A.V.Nirgude & V.L.Achliya, JJ.] dated 7th June, 2016 in Criminal Writ Petition No.274/2016 against respondent nos.4 to 20. There is also another prayer in the Contempt Petition, seeking direction to remove the temporary huts erected by respondent nos.4 to 19 in Gat No. 117 in view of undertaking given by those respondents. It also seeks direction to provide police protection to the petitioner pursuant to the order dated 7th June, 2016, passed by this Court in Criminal Writ Petition No.274 of 2016, and further seeks direction to respondent nos.2 and 3 to refund the amount of Rs.39,578/- deposited by the

petitioner in the office of respondent no.3 towards police protection and an amount of Rs.5,739/- deposited in the office of Superintendent of Police, Ahmednagar, towards security tax. In fact, the petitioner has sought multiple reliefs. Some of the prayers cannot be considered while exercising jurisdiction under Article 215 of the Constitution of India or the provisions of the Contempt of Courts Act, 1971.

2. The relevant direction issued by the Division Bench of this Court [Coram: A.V.Nirgude & V.L.Achliya, JJ.] in Criminal Writ Petition No.274/2016 by the judgment and order dated 7th June, 2016. Para 2 and 3 of the said Judgment, reads thus:

2] This dispute should be dissolved through the provisions of Maharashtra Restoration of Land to Scheduled Tribes Act, 1974. The said authority we are told, is the

Tahsildar. We direct the Tahsildar to decide the claims of the parties afresh within 6 months from today. Due to the disputed claims, we noticed that the intervenors have started staying since last few weeks in the adjoining land and are trying to create law and order problem.

3] The intervenors-respondents are directed to give undertaking to the Court stating therein that till the concerned authority decide the matter they will not disturb the petitioner's cultivation of the disputed land and they will not enter into the land without his permission and maintain law and order. Such undertaking shall be given by all the adults residing in the adjoining land. The list of such persons should be filed today on record. Copy of this order be sent to concerned police and provide police protection as per the earlier direction of this Court.

3. The learned counsel appearing for

the parties informed this Court that, pursuant to the directions issued by this Court to the Tahsildar, he has decided the claim of the parties. Therefore, the directions contained in para 2 and 3 were supposed to remain in force till the Tahsildar decides the claim of the parties. Admittedly, as already observed, the Tahsildar has decided the issue / claim.

4. Pursuant to the notices issued to the respondents, respondent nos.2 and 3 have filed affidavit-in-reply and additional affidavit-in-reply. It is stated in the said reply filed by the State that respondent nos. 2 and 3 have extended necessary police protection to the petitioner to harvest and transport the sugarcane to the concerned sugar factory from Gat No.117/11. It is stated in the said affidavit in reply that Gat No.117/11 situated at village Ashwi [Khurd], Taluka Sangamner, District

Ahmednagar is owned and possessed by the State of Maharashtra and entry to that effect is also recorded in the 7/12 extract. The said land Gat No.117/11 is on the road of village Dhad [Khurd] to Chanegaon. The answering respondent and Talathi have visited the said disputed land. The Talathi in presence of panchas has conducted the spot inspection and prepared the spot panchanama on 9th December, 2016. It is revealed from the said panchanama that in the said Gat No. 117/11, there is a well and rest of the area is not under cultivation. The spot panchanama also says that on the north side of the Gat No.117/11, there is road from Dhad [khurd] to Shiblapur and there are 5-6 huts near the road. Since there are no boundaries to Gat No.117/11, therefore, it cannot be said that whether these huts are in Gat No.117/11 or out of the boundaries of the said Gat number.

5. It is further stated that the issue

regarding the ownership and restoration of possession between the petitioner and respondent nos.4 to 19 was pending before the Tahsildar, Sangamner, under the provisions of the Maharashtra Restoration of Land to Scheduled Tribes Act, 1974. This Court, while disposing of the Writ Petition by order dated 7th June, 2016, has directed the Tahsildar, Sangamner, to decide the claims of the parties. Accordingly, the Tahsildar, Sangamner by judgment and order dated 17th February, 2017, has decided the application filed by the respondent nos.4 to 19 under the provisions of the Maharashtra Restoration of Land to Scheduled Tribes Act, 1974. The Tahsildar, Sangamner, has disposed of the application of the respondent nos.4 to 19. The Tahsildar has also observed that the possession of present petitioner is illegal. The Tahsildar, while passing the judgment and order dated 17th February, 2017, while dealing

with the issue no.6 has specifically observed that the possession of the present petitioner is illegal. Further he came to the conclusion that the ownership of the land is with the State of Maharashtra, and possession of the said land is liable to be restored with the State of Maharashtra.

6. It is further stated that upon considering the reasons recorded by the Tahsildar and also spot panchanama conducted by the Talathi, Sangamner, dated 9th December, 2016 as well as the judgment and order dated 17th February, 2017, it is seen that the petitioner is in unauthorized possession of the suit property and the present respondent nos.4 to 19 could not prove their claim as legal heirs.

7. Respondent nos.4 to 19 have also filed affidavit-in-reply. It is stated in para 10 of the said affidavit-in-reply that

as per the order passed by this Court, they gave the undertaking before this Court that, they will not disturb the possession or enter into the disputed property. They have not entered into the disputed property and not obstructed the petitioner from cultivation the land. But the petitioner wish to remove the huts of the respondent Nos.4 to 19, which are not in the disputed property. It is further submitted that, the petitioner has not approached the Court with clean hands. As such, the Contempt Petition deserves to be dismissed.

8. We have considered the submissions of the learned counsel appearing for the parties. With their able assistance, we have perused the averments in the Contempt Petition, annexures thereto and the affidavit-in-replies filed by the respondents and we are of the opinion that, there is no material/documents on record to reach to the

definite conclusion that, as a matter of fact respondent Nos.4 to 20 disturbed the petitioner's cultivation of the disputed land and they entered the disputed land. The Tahsildar now has decided the claims, we are satisfied with the reply filed by the respondents. There is no willful disobedience as such. We do not wish to comment upon merits of the claims, since Tahsildar has decided the same and it is informed that, proceedings are taken to the higher forum.

9. So far as sugarcane which is supplied by the petitioner to the sugar factory is concerned, the petitioner is free to approach the concerned Authority for payment towards sugarcane price. Needless to observe that, the concerned Authority keeping in view the dispute between the parties shall take proper decision in that respect.

10. In that view of the matter, the Contempt Petition stands disposed of.

[K . K . SONAWANE]
JUDGE

[S . S . SHINDE]
JUDGE

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