

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

**CRIMINAL WRIT PETITION NO. 820 OF 2008
WITH
CRIMINAL APPLICATION NO. 3996 OF 2017**

Dr. Narendra s/o. Madanrao Zambre, .. Petitioner
Age. 35 years, Occ. Service,
R/o. Baramati, Tq. Baramati,
Dist. Pune.

Versus

1. The State of Maharashtra .. Respondents
Through Police Station, Tuljapur,
Dist. Osmanabad.
2. Subhash s/o. Bhagwatrao Salunke,
Age. 51 years, Occ. Agri.,
R/o. Kati, Tq. Tuljapur,
Dist. Osmanabad.

Mr.V.D. Salunke, Advocate for the petitioner.
Mr.S.D. Ghayal, A.P.P. for respondent No.1/State.
Mr.S.S. Choudhari, Advocate for respondent No.2.

**CORAM : T.V.NALAWADE &
S.M.GAVHANE, JJ.
DATED : 06.09.2017**

J U D G M E N T [PER : T.V. NALAWADE, J.] :-

1. This petition is filed for the relief of quashing of F.I.R. in M.Case No.14 of 2008 dated 13.04.2008, registered with Tuljapur Police Station,

Dist. Osmanabad. The crime is registered on the basis of directions given by the learned Judicial Magistrate, First Class, Tuljapur, under section 156(3) of the Code of Criminal Procedure in Misc. Proceeding No.89 of 2008. The private complaint was filed for offences punishable under section 166, 167, 420, 466, 468, 469, 471 read with section 34 of the Indian Penal Code. In Criminal Application No.3996 of 2017, filed in this Court, the permission is sought by the original complainant to produce some documents, which are in relation to the dispute between the original complainant and one of the accused persons. Both the sides are heard.

2. It is the case of the complainant that on 27.01.1992 under registered sale-deed, he purchased land admeasuring 7 H 86 R from Gat No.858 situated at village Kati from Yojanadevi Deshmukh. In the past Yojanadevi was owner of Survey No.322 admeasuring 11 H 34 R. Under sale deed dated 27.04.1982 accused No.5-Amarsinha Nimbalkar had purchased 10 Acres 16 Gunthas land from

Yojanadevi for consideration of Rs.17,000/-. After the transaction with Nimbalkar, Survey No.322 was divided into pot-hissa and Survey No.322/1 was the number given to the portion purchased by Nimbalkar. To the remaining portion, Survey No.322/2 was given and that remained with Yojanadevi. Its size was 7 H 14 R.

3. After purchasing the aforesaid portion by Nimbalkar, consolidation scheme was implemented in the village. The land purchased by Nimbalkar was given Gat No.859.

4. Land Survey No.322/2, which was with Yojanadevi and other land Survey No.323 having area of 72 R were consolidated and to this consolidated portion Gat No.858 was given in or about year 1987-88. Thus, in the year 1992 when the complainant purchased land from Yojanadevi, she was owner of land Gat No.858.

5. Regular Civil Suit No.204 of 2000 was filed in

the Court of Civil Judge, Junior Division, Tuljapur by the complainant - Subhash Salunke for removal of encroachment allegedly made by Nimbalkar on land Gat No.858. When this suit was pending, Nimbalkar made application to the Dy. Director of Land Record, Aurangabad on 02.07.2003. He contended that he had purchased land admeasuring 10 Acres 16 Gunthas under sale-deed of 1982. He contended that at the time of implementation of consolidation scheme, the measurements were not taken as per the actual possession. He contended that as the measurement was not made as per actual possession, wrong map of new lands bearing Gat numbers was created. He admitted that in the year 1993, there was measurement made on the basis of sale-deed executed in favour of complainant and he contended that at that time wrong report was prepared and it was wrongly shown that he had made encroachment. He had prayed in the application to show the portion, which was in his possession from land Gat No.858 as a part and parcel of Gat No.859 and show area of land Gat No.858 as 5 H 6 R in

place of 4 H 20 R.

6. It appears that the matter was referred to the T.I.L.R., present petitioner and he was expected to take measurements and give the report. It is contention of the petitioner that he had given notice to the complainant and he had considered objections taken by him, which were of aforesaid nature and he had then given report to the Superintendent of Land Record. It appears that, the Superintendent of Land Record in communication dated 24.03.2004 informed that the area was corrected. After that private complaint came to be filed.

7. In the private complaint, there are allegations that false report of enquiry was created by the present petitioner - T.I.L.R. and when the application was given to include encroached portion in Gat No.859, statement was recorded to show that accused Nimbalkar was owner of 86 R portion of Gat No.858 and accordingly the record was created. It is contention of the complainant that when

there is implementation of provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, change in the record and the map cannot be made unless there is permission of the Divisional Commissioner or the Collector. It is contended that, present petitioner joined hands with Nimbalkar and due to that aforesaid revenue record came to be created.

8. Learned Counsel for the petitioner placed reliance on the provisions of The Judges (Protection) Act, 1985 and some reported cases of this Court and the Supreme Court. The cases are as under :-

- (1) Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr., 2013 AIR SCW 5570.
- (2) Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors., (2015) 6 SCC 287.
- (3) State of Haryana Vs. Bhajan Lal, 1992 AIR (SC) 604.
- (4) Vineet Kumar & Ors. Vs. State of UP & Anr., 2017 SCC OnLine SC 316.
- (5) Debashish Chakrabarty & Anr. Vs. The State of Maharashtra, Cr.WP No.4765 of 2014 & other companion matters dated 09.10.2015 of Bombay High Court.
- (6) Narendra Madan Zambre & ors. Vs. State & ors., 2006(1) Mh.L.R.54.
- (7) Udaysingh Ramsingh Pawar Vs. State of Maharashtra & Arn., 2009(3)Mh.L.J.225.
- (8) JIK Industries Ltd. & Anr. Vs. Sunil Ranchorlal

Bajaj & Anr., 200((3)Mh.L.J.228.

(9) Shivkaran s/o. Ganpatrao Bharti & Anr. Vs. The State of Maharashtra & Anr., Cr.WP No.138 dated 20.06.2009 of Bombay High Court.

(10) Dadarao s/o. Dhondiram Borade & Ors. Vs.Damodhar s/o. Bhika Madan & Anr., Cr.WP No.640 of 2007 dated 23.03.2011 of Bombay High Court.

(11) Venkat s/o. Limbaji Koli Vs. The State of Maharashtra & Anr., Cr.Application Nos.4924 of 2010 & 4925 of 2010 dated 13.04.2011 of Bombay High Court.

(12) Smt. Shobha w/o. Vidyasagar Jadhav Vs. The State of Maharashtra & Ors., Cr.Application No.3175 of 2006 dated 25.04.2014 of Bombay High Court.

9. The contention of the present petitioner that he needs to be treated as a Judge as defined in aforesaid The Judges (Protection) Act, 1985 cannot be accepted. Even under Land Revenue Code, the T.I.L.R. has no power to take decision and he works only as a Surveyor, the officer who takes measurement. The T.I.L.R. has no power to change revenue record or make a proposal to change the revenue record. The act of measurement and even orders passed in regular proceedings filed for correction under section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, cannot confer title, if prior to consolidation, there was no title in the land.

In view of these circumstances, it cannot be said that the petitioner has protection of the aforesaid The Judges (Protection) Act. On the basis of the allegations and the record created, it can be said that there was no jurisdiction to the petitioner to create the record of aforesaid nature.

10. The record produced includes copies of sale-deeds executed by the original owner in favour of Nimbalkar in the year 1982 and in favour of Salunke in the year 1992. The sale-deeds show that in the year 1982, the land of Yojanadevi was having Survey No.322 and total area owned by her was 11 H 34 R (approx. 28 Acres 1 Guntha). The sale-deed of 1982 shows that out of this portion, land admeasuring 10 Acres 16 gunthas, which was western portion of land Survey No.322 was purchased by Nimbalkar. The record of consolidation like forms show that as per old record, Falni (division) of Survey was done on the basis of sale-deed executed in favour of Nimbalkar and the portion purchased by him was given

Survey No.322/1. Though area purchased was 10 Acres 16 Gunthas, the area of Survey No.322/1 was shown as 4 H 20 R and 4 R portion was shown more. Yojanadevi was shown as owner of Survey No.322/2 having area 7 H 14 R.

11. The sale-deed executed in the year 1992 in favour of complainant – Salunke shows that Yojanadevi was shown as owner of Gat No.858. The consolidation form shows that Gat No.858 was formed by combining Survey No.322/2 and Survey No.323. Survey No.323 admeasuring 72 R was also owned by Yojanadevi. After combining these two survey numbers, land was given new number as land Gat No.858 having area 7.86 H. In the sale-deed of 1992 land Gat No.858 in entirety was sold to Salunke and the area sold was shown as 7 H 73 R (additional 13 R as pot-kharab – barren land). Thus, in the year 1992, Yojanadevi was owner of entire portion of Gat No.858 and this portion was sold to complainant – Salunke. On the basis of sale-deed, mutation was made and only Salunke was shown as owner of land Gat No.858. Prior to that only Yojanadevi

was shown as owner of entire portion of land Gat No.858.

12. The aforesaid circumstances show that when the scheme of consolidation was implemented, Nimbalkar had not raised any grievance when he was shown as owner of land land Gat No.859 having area 4H 20 R. Yojanadevi was shown as owner of entire portion of Gat No.858. Nimbalkar was having an area purchased by him under sale-deed of 1982 and in Gat No.859 he was having more area of 4 R portion. In view of these circumstances and as Nimbalkar is in possession of some portion of land Gat No.858, suit for removal of encroachment is filed against him by Salunke. When the suit is filed for removal of encroachment, issue of title is always involved. So it was open for Nimbalkar to show that he was owner of the portion of land Gat No.858. On the basis of aforesaid record, for the purpose of present proceeding, it can be said that it was not possible for Nimbalkar to protect possession of portion encroached by him in Gat No.858. This record also shows that there was no mistake at all

committed during implementation of consolidation scheme as entire area which was purchased by Nimbalkar was given Survey No.322/1 on the basis of sale-deed and to this portion new number was given in consolidation of land as Gat No.859. There was no mistake like mistake in arithmetic calculation etc. Further Nimbalkar himself had contended in the application that only because he was in possession of some portion from land Gat No.858, he ought to have been shown as owner of that portion also. He was asking to divide land Gat No.858 and include the portion of that land Gat number, which was in his possession in Gat No.859. That kind of correction was not at all possible under section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Further, the contention of Nimbalkar that he was in possession and so his name needs to be entered as owner could not have been considered by the T.I.L.R. or the Superintendent of Land Record. There is separate authority created like Tahsildar and then there are Appellate Authorities above the Tahsildar. Thus, the

T.I.L.R. and even the Superintendent of Land Record had no jurisdiction to entertain this dispute. Further, the dispute over the title of aforesaid nature was pending before the Civil Court and this circumstance was brought to the notice of the T.I.L.R. In spite of all these things, the T.I.L.R. petitioner prepared a report in favour of Nimbalkar and accordingly revenue entry came to be made in favour of Nimbalkar and he is shown as owner of 86 R portion from Gat No.858. It can be said that this record will not come in the way of Civil Court, as this record cannot confer title on Nimbalkar, but that way the mischief committed by Nimbalkar and the present petitioner cannot be ignored. Due to these circumstances, it is not possible to accept the contention made by the petitioner that Salunke ought to have challenged the order made by the Superintendent, Land Record of aforesaid nature and the Criminal Court ought not to have given direction to make investigation.

13. The submissions made by learned Counsel for the

petitioner and the case reported at 2006(1) Mh.L.R.54 (Narendra Madan Zambre & ors. Vs. State & ors.) show that in the past also there were allegations made against petitioner Zambre of creation of false record. He succeeded in that proceeding as this Court quashed the F.I.R. In that case the facts were also somewhat different. The relevant facts of the present matter are already quoted and they show that the things are done with mala fide intention and even when there was no jurisdiction, the things are done. It cannot be said that the allegations made, do not make out the offences mentioned in the private complaint – F.I.R. It cannot be said that criminal proceeding is started maliciously by Salunke. Such instances are increasing day by day and the persons like present petitioner are causing damage to the entire system due to such conduct. This Court holds that it is not a fit case to quash the F.I.R. and set aside the order of the Judicial Magistrate, First Class.

14. Present matter is of year 2008 and so the

procedure which was applicable at the relevant time was followed by the learned J.M.F.C. The contentions with regard to necessity of sanction under section 197 of Cr.P.C. etc. cannot be considered in this case. Further, due to nature of offence and mala fides discussed, otherwise also these contentions could not have helped the petitioner. So, the observations made in cases cited supra are of no help to the petitioner.

15. In the result, Criminal Writ Petition No.820 of 2008 stands dismissed. Rule stands discharged. Interim relief stands vacated.

16. Criminal Application No.3996 of 2017 filed for permission to produce documents is allowed. These documents are considered by this Court.

[S . M . GAVHANE , J .]

[T . V . NALAWADE , J .]