

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 123 OF 2015

Gajanan s/o Ramkrusha Satote,
Age 47 years, Occupation Service as Field
Officer CIDCO Mahanagar, Waluj.

(Note : The name of the Petitioner is
incorrectly written as G.R. Sarote
by the complainant)

...Petitioner

Versus

1) Shaikh Naser s/o Shaikh Ibrahim,
Age 51 years, Occupation Business,
R/o Jaisingpura, Aurangabad.

2) The Police Inspector,
MIDC Waluj Police Station,
Aurangabad.

...Respondents

Mr. S. V. Kurundkar, Advocate for petitioner.

Mr. A. B. Kale, Advocate for respondent No.1.

Mr. M. M. Nerlikar, Addl. Public Prosecutor, for respondent
No.2/ State.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.**

DATE : 26-10-2018.

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. Present petition has been filed by invoking the powers of this Court under Article 226 and 227 of Constitution of India as well as inherent powers of this Court under Section 482 of Code of Criminal Procedure to challenge the order dated 28-11-2014 passed by

learned Sessions Judge, Aurangabad in Criminal Revision No. 245 of 2014 in whose consequence FIR /Crime No. 1296 of 2014 dated 02-12-2014 came to be registered for the offences punishable under Section 143, 447, 427, 323, 504, 506 of Indian Penal Code.

2. Respondent No.1 had filed a private complaint stating that, he is the owner and possessor of agricultural land bearing land Gut No.120 situated at village Tisgaon, Aurangabad admeasuring 31 Acres 2 Gunthas and other 15 Acres land. He says that, he is owner of 31 Acres 2 Gunthas land by way of registered sale deed and possessor of 15 Acres land by virtue of agreement to sale. He went to his land around 04.00 to 05.00 p.m. on 04-07-2014 at that time he saw that one G. R. Satote and one Milind Navadikar along with 30 to 35 persons had entered his land without his permission, damaged the agricultural equipment and tried to dig holes for fencing. Applicant / present respondent No.1 opposed the illegal design but those persons threatened him to kill, assaulted him and it was warned that if he enters the land then his limbs will be cut and the pieces of bodies would be buried in the same land. It was also threatened that, there are some ladies belonging to scheduled caste community and then he would be involved in a false case under Atrocities Act. It is stated that, against those persons who are trying to grab the property he had also reported matter twice earlier but no offence was registered. After the incident dated 04-07-2014 also he

had approached the police on 05-07-2014 with a written complaint, however it was not taken. It is stated that, those accused persons had come with full preparation and thereby they had caused unlawful assembly. They had gathered there with an intention to commit offence. In spite of giving written complaint, no cognizance was taken and therefore he had filed Criminal Application No.1430 of 2014 before learned Judicial Magistrate First Class, Aurangabad with a prayer that, the matter should be sent for investigation under Section 156 (3) of Cr.P.C.

3. After hearing the applicant, the said application came to be rejected. Important point to be noted is that, the original applicant that is present respondent No.1 preferred Criminal Revision No. 245 of 2014 before Additional Sessions Judge, Aurangabad. The said application came to be allowed on 28-11-2014 and directions were given to register First Information Report on the basis of the complaint lodged by the present respondent No.1. Thereupon the said FIR has been registered vide Crime No. 296 of 2014. The said order as well as FIR is under challenge in this writ petition.

4. Affidavit-in-reply has been filed on behalf of respondent No.2 by Assistant Police Sub-Inspector Vitthal Shenphad Jawkhede attached to MIDC Waluj Police Station, Aurangabad. Ultimately he has stated that, the petitioner was asked to produce documents, so

also it was asked to the complainant but documents have not been produced.

5. Heard learned advocate Mr. S. V. Kurundkar for appellant, learned Addl. Public Prosecutor Mr. M. M. Nerlikar for respondent No.2 – State and learned advocate Mr. A. B. Kale appearing for respondent No.1. Perused the documents on record. All of them have made submissions canvassing their contentions.

6. Present applicant was Field Officer serving with CIDCO. He has been arrayed as accused in the present FIR. He has contended that, the learned Additional Sessions Judge failed to consider the material on record. The learned Additional Sessions Judge failed to consider that the officers of CIDCO against whom allegations were made, were in fact acting in their official capacity. The land in question was acquired by Government by developing Waluj Mahanagar and CIDCO. Special Planning Authority under Section 40 of the Maharashtra Regional and Town Planning Act, 1966 has been established. Special Land Acquisition Officer has passed an award and has handed over the possession of the land in question to CIDCO. Documents to support this contention have been produced on record. It is stated that, the respondent No.1 had no right whatsoever nature over the property which was acquired by CIDCO. After the acquisition of the land name of CIDCO was mutated in the

record of rights. The 7/12 extract has been produced on record. It is stated that the land was acquired for Sewage Treatment Plant which was in the public interest. Since the land belong to CIDCO it had every right to carry out any activity on its land. No offence has been committed by the petitioner, and therefore, the said FIR deserves to be quashed against him.

7. In the application filed under Section 156 (3) of Code of Criminal Procedure, nobody has been made as accused or respondent. Only the Police Inspector, MIDC Waluj was made as respondent. After the rejection of that application when the present respondent No.1 preferred criminal revision application even at that time also except Police Inspector nobody else was the respondent. Therefore, definitely whatever the applicant intends to say has to be considered in this petition only. The original complainant has stated that, he owned agricultural land bearing Gut No.120 to the extent of 31 Acres and 2 Gunthas by way of registered sale deed. Further 15 Acres land is stated to be in his possession by virtue of agreement to sale. Now as regards the agreement to sale is concerned, the position of law is very much clear that, that document does not give any kind of right in favour of proposed purchaser. Unless there is a sale deed, that is a document of title, the person in whose favour agreement to sale has been executed will not have any right. Documents have been produced on record to show that, 3 Hectar

land from Gut No.120 standing in the name of Jafaullakhan Gulam Insarkhan and Shaikh Babu Shaikh Abraham Nazir were the holders and it was acquired. Thereafter for possession, a panchanama was executed on 04-04-2012 regarding taking of possession. Mutation entry was effected and the same has reflected in the 7/12 extract. Further it appears that the present respondent No.1 has not challenged the acquisition proceeding, and therefore, the said proceeding has achieved finality. When 3 Hectore land was acquired after executing due procedure, respondent No.1 cannot be said to be the owner of that part of land which has been acquired. He cannot put resistance to the acquisition body or acquiring body in respect of entry and exit from the said piece of land. The learned advocate appearing for the respondent No.1 has tried to rely on order passed that R.C.S.No.1064 of 2012 was filed by present respondent No.1 against CIDCO. It appears that, the learned Additional Sessions Judge while dealing with the criminal revision application did not consider that much documents were available in the Court itself which could have adjudicated the issue. On the apparent pleadings it cannot be arrived at that the culprit had violated any order or has committed any cognizable offence. Even for sending a matter for investigation under Section 156 (3) of Cr.P.C., the learned Magistrate should apply his mind, he need not probe the things in detail but he has to see whether the complaint makes out a cognizable offence

and whether the matter is such that it should be dealt with by sending it for investigation to the police officer. First and the foremost fact is that the name of the present applicant was not disclosed in the said application. In what capacity said G. R. Satote and Milind Navadikar had entered the land was not clarified. Even if we assumed that he was not aware about them but when he gives names of these two persons then he ought to have given who were they. He does not say that, he had made enquiry with them as to how they had entered his land. Intentionally the application has been kept vague. Under such circumstance, it was not appropriate on the part of the learned Additional Sessions Judge to set aside the order of rejection of the learned Magistrate.

8. The applicant has produced on record the copy of the FIR vide Crime No. 1296 of 2014. It is to be noted that, some other details have also been given in the said FIR which were not pleaded in his Criminal Application No. 1430 of 2014. That means, the contents of the present FIR were not before the learned Additional Sessions Judge. There was no attempt on the part of the learned Additional Sessions Judge to know against exactly whom or which authority the complainant intends to go ahead. It was also pointed out that, civil dispute was pending between the original owner and the complainant and an injunction order was also passed. Unless the rights of the parties in respect of the land would have been *prima*

facie assessed, it cannot be said that the learned Additional Sessions Judge was justified in setting aside the order passed by the learned Magistrate. It is to be noted that, even before this Court now respondent No.1 has not produced any record to show that either he or his predecessor had challenged the acquisition proceedings. Respondent No.1 has not disclosed the date of agreement to sale. Under such circumstance it will have to be held that the learned Additional Sessions Judge erred in allowing the revision, the revision ought to have been dismissed. It would be futile exercise to ask the present applicant to face the trial. Hence, following order.

ORDER

- 1) Petition is hereby allowed.
- 2) Relief is granted in terms of prayer Clause "B" and "C" to the petitioner.
- 3) Rule made absolute in above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.