

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

CRIMINAL APPLICATION NO. 196 OF 2007

Aseemkumar s/o Surendrakumar
Gupta
Age 36 years,
Occu : Commissioner, Municipal
Corporation, Aurangabad **... Applicant**
R/o Aurangabad.

VERSUS

1. Jaising s/o Bhimsing Pardeshi,
Age: 30 years, Occu. Business,
R/o Pardeshi Tower,
Shahanoorwadi, Aurangabad.
2. Aparna Somani,
Age : Major, Occu. Service,
(Tahsildar)
Dist. Aurangabad
3. Ajay Murlidhar Mache,
Age : Major, Occu. Business,
R/o Plot No. 8, State Bank
Colony, Osmanpura, Aurangabad
4. The State of Maharashtra
Through the Police Station,
City Chowk, Aurangabad
(Copy of respondent no. 4 to be
served through Govt. Pleader,
High Court of Judicature of
Bombay Bench Aurangabad) **... Respondents**

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Mr. S. N. Pagare, Advocate for the Applicant.

Mr. A. S. Kale h/f Mr. S. B. Talekar for the Respondent
No. 1.

Mr. Anand P. Bhandari for the Respondent No. 2.

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ALONGWITH**CRIMINAL APPLICATION NO. 763 OF 2007**

Aparna d/o Dineshchandra
 Somani
 Age 30 years, Occu : Service,
 (Tahsildar) R/o Aurangabad. **... Applicant**

VERSUS

1. The State of Maharashtra
 through P.I. City Chowk Police
 Chauki Aurangabad.
 (Copy to be served on P.P.
 High Court of Judicature of
 Bombay Bench at Aurangabad.)
2. Jaising s/o Bhimsing Pardeshi,
 Age : 30 years, Occu. Business
 R/o Pardeshi Towers,
 Shahanoorwadi, Aurangabad **... Respondents**

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Mr. Anand P. Bhandari for the Applicant.

Mr. A. S. Kale h/f Mr. S. B. Talekar for the Respondent
 No. 2.

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CORAM : T. V. NALAWADE AND
 K. L. WADANE, JJ.

DATE: : 4th June, 2018

JUDGMENT (Per K. L. Wadane, J.):

1. These Criminal Applications are arising out of
 the same order challenged by the accused in RCC
 No.89/2007, therefore, parties are referred to their
 original status in the criminal case.

2. We have heard the arguments of the learned counsel appearing for the applicants as well as for the respondents in both the cases.

3. The accused No. 1 – Commissioner of Municipal Corporation, Aurangabad presented Criminal Application No.196/2007 and the accused No. 2 the then Tahsildar of Aurangabad have presented Criminal Application No.763/2007.

4 Factual matrix of the case are as follows:

i) The dispute relates to the land admeasuring 15881 sq.mtrs. out of Survey No.12 situated at Shahanoorwadi, Aurangabad. Initially, the said land was reserved for washery (Dhobighat) and subsequently was acquired for the purpose of washery by the Municipal Corporation, Aurangabad through private negotiation and the possession of the said land was handed over by the original owner i.e. the father of the complainant namely Bhimsing on 01.08.1985. The original complainant alleged in his complaint that the owner of land survey No.12 admeasuring 17 Acres and 1 Guntha situated at Shahanoorwadi had agreed to handover the possession of the land

required for construction of the road or for construction of a washery (Dhobhighat) on the condition that the Municipal Corporation, Aurangabad would put-forth terms and conditions of a negotiation, the owner of the land including the complainant and successor of the complainant had shown their willingness to accept the market rate to be fixed by the Municipal Corporation, Aurangabad in case the land was to be acquired through private negotiation.

ii) It is further contended by the complainant that the representative of the Municipal Corporation Aurangabad namely Mr. E. V. Sonawane prepared a punchanama showing the possession of the land taken over to the extent of 15881 sq.mtrs for the purpose of construction of washiry on 01.08.1985. However the said land was never acquired either through private negotiations or by passing an award under Section 11 of the Land Acquisition Act.

iii) It is further alleged that since there was no agreement between the corporation and the original owner about the acquisition of the

aforesaid land by private negotiation, so the possession of the aforesaid land was remained with the complainant and his family members. According to the complainant punchanama was never acted upon and property was never acquired by following procedure under Section 77 and 78 of the Act. Thus, the accused Nos. 1 and 2 in order to cause wrongful loss to the complainant and his family members have transferred the property belonging to the complainant and his family members in the name of the Municipal Corporation, Aurangabad and they have committed the offence punishable under Section 406, 409, 420, 465, 468 and 471 read with Section 120 B and 34 of Indian Penal Code.

iv) It is further alleged that after commission of the aforesaid alleged offence, the complainant approached to the concerned police. However, they have not taken the cognizance, therefore, the complainant approached to the Criminal Court at Aurangabad by filing aforesaid criminal case against the accused persons. On presentation of the

Criminal Case the learned Judicial Magistrate had called the report under Section 156 (3) of the Criminal Procedure Code. Thereupon, the concerned police have registered the First Information Report. Therefore, by filing the aforesaid two applications the original accused Nos. 1 and 2 have prayed to quash and set aside the order dated 15.01.2007 passed by the Judicial Magistrate First Class to call the report under Section 156 (3) of Cr. P. C. as well as they also prayed to quash and set aside the proceeding in RCC No.89/2007 and the FIR dated 16.01.2007.

5. We have also perused the documents placed on record including copy of the Civil Appeal No. 1968/2015 filed before the Apex Court.

6. On perusal of the record it appears that the accused No. 2 on the basis of the opinion given by the Government Pleader, High Court at Aurangabad has directed the revenue authorities to enter the name of the Municipal Corporation since the land is acquired by the corporation through private negotiation with the father of the complainant namely Bhimsing. It further reveals from the record that the complainant has

challenged the order dated 21.12.2016 by which the accused No.2 has directed the Revenue Authorities to take the mutation entry of the corporation in the 7/12 extract that order was challenged by the complainant before the Sub Divisional Officer which was dismissed. Again the complainant has challenged the order passed by preferring Second Appeal before the Additional Collector, Aurangabad which was also dismissed on 05.08.2009. Again the complainant challenged the said order by filing Revision Petition which was also dismissed on 05.06.2010 having lost before all Revenue Authorities the complainant filed Writ Petition No. 10512/2010 before the High Court and challenged the mutation entry, attempted to challenge process of acquisition and compensation which had attained finality in view of the order passed by this Court. It further reveals from the record that the father of the complainant namely Bhimsing the original owner of the land had only questioned the quantum of the compensation in lieu of the land acquired for Dhobhighat and there was no dispute over the question of title after the agreement was concluded and the acquisition of land and the possession was taken by the corporation. The corporation had also deposited the

amount of compensation before the concerned Court in the year 1989.

7. On this background and on scrutiny of the further record, it reveals that the possession of the land was already taken from the original land owner namely Bhimsing on 01.08.1985 and same is cleared from panchanama dated 01.08.1985. It was signed by the Officer representative of the Municipal Corporation, Aurangabad as well as original owner Bhimsingh Shetal Singh Pardeshi alongwith punch witness. Looking to the averments/allegations in the complainant it appears that it is one of the contention of the complainant that the land was not acquired by corporation by following due process of law. However, that cannot be a basis to file a criminal complaint against the accused persons. On the contrary, it reveals that the accused No. 2 Thasildar, in her official capacity and after taking legal opinion from the Government Pleader has directed the Revenue Authorities to take necessary mutation in the name of Municipal Corporation, Aurangabad, therefore, that cannot be treated that the accused Nos. 1 and 2 i.e. the applicants in the present applications have illegally transferred the land of the complainant in favour of Municipal Corporation,

Aurangabad and committed criminal breach of trust. On the face of record no case is made out by the complainant to proceed against the accused persons.

8. It appears from the record that the Municipal Corporation has already deposited the amount of compensation determined in respect of the acquired land and it *prima facie* reveals from the record that the land was acquired by a private negotiation with the original owner. Therefore, by taking disadvantage of the alleged irregularity, the complainant is trying to initiate a criminal proceedings against the public servants that to without any evidence. In such circumstances, the applications filed by the accused Nos. 1 and 2 are need to be allowed and accordingly, they are allowed and the order passed by the Judicial Magistrate First Class, dated 15.01.2007 and the proceedings bearing RCC No.89/2017 and the first information report dated 16.01.2017 are quashed and set aside. No costs.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)