

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

Criminal Application No.2155 of 2014

- 1) Subhash S/o Pundlikrao Jaikar,
Age 56 years,
Occupation : Service,
C/o Wildlife Office, Kannad.
- 2) Tulshiram S/o Tatya Aware,
Age 58 years,
Occupation: Service,
C/o Range Forest Office,
Jalna (South), Mangal Bazar,
Jalna.
- 3) Madan S/o Dattatraya Pandhare,
Age 38 years,
Occupation: Service,
R/o Near Tahsil Office, Ambad,
Taluka Ambad, District Jalna.
- 4) Sitaram S/o Maroti Jadhav,
Age 56 years,
Occupation: Service,
R/o Kaikadi Galli, Ambad,
Taluka Ambad, District Jalna.
- 5) Bhanudas S/o Namdeo Kharat,
Age 38 years,
Occupation: Service,
R/o Dhangar Galli, Ambad,
Taluka Ambad, District Jalna.
- 6) Navnath S/o Rohidas Pawar,
Age 25 years,
Occupation: Driver,
R/o Ramnagar Tanda,
Taluka Ambad,
District Jalna.

.. Applicants.

Versus

- 1) The State of Maharashtra,
Through Ambad Police Station,
Ambad.
- 2) Dilip S/o Rambhau Paulbuddhe,
Age 35 years, Occupation: Agriculture,
R/o Mali Galli, Ambad,
Taluka Ambad, District Jalna. .. **Respondents.**

Shri. S.S. Jadhavar, Advocate, for applicants.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent No.1.

Shri. D.K. Rajput and Shri. S.V. Mandlik, Advocates, for
respondent No.2.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 6 AUGUST 2018

JUDGMENT (Per T.V. Nalawade, J.):

- 1) The proceeding is filed under section 482 of the
Code of Criminal Procedure for relief of quashing of
F.I.R.No.4/2014 registered with Ambad Police Station
District Jalna for offences punishable under sections
323,143,147,149, 504, 506 etc. of Indian Penal Code. Both
the sides are heard.

2) The applicant Nos.1 to 6 are employees of the Forest Department. Allegations are made against them by respondent No.2 that on 23-8-2012 the employees of the Forest Department formed unlawful assembly and even when there was order of temporary injunction in his favour they created obstruction in his possession over the disputed property to take possession of the property illegally. The property described is from Survey No.170/2 from Kasbe Ambad to the extent of 1.5 Gunthas.

3) The record produced for the applicants shows that for the Forest Department a report was given against respondent No.2 in respect of some incident and it is F.I.R. No. 186/2012 for offences punishable under sections 354, 447, 504, 405, 427 etc. of Indian Penal Code and section 26(1) of the Indian Forests Act 1927. In the said F.I.R. allegations were made that on 23-8-2012 itself i.e. on the date of the incident present respondent No.2 had come to the land of the Forest and he had caused damage to the property of the Forest by removing the fencing done around the property of the Forest. Even JCB machine bearing No.MH-21-AD-838 was brought and by using the

JCB, 30 steel polls were uprooted, wire was broken and leveling of the portion was done by present respondent No.2. Damage worth of Rs.25,000/- was caused by respondent No.2 to the property of the Forest.

4) The submissions made show that one suit was filed by present respondent No.2 against the Forest Department and in the said suit (Civil Suit No.519/2012) the learned Civil Judge Senior Division Jalna granted relief of temporary injunction by order dated 30-7-2012. This was in respect of Survey No.170/2 to the extent of 1.5 Gunthas. The Forest Department is not disputing that the respondent No.2 is the owner of that much portion. It is the contention of the Forest Department that it had erected wire fencing only after taking measurement of the land of the Forest from Survey Office.

5) In the F.I.R. given by the Forest Department bearing No.186/2012 panchanama was prepared and that shows that many polls were uprooted, wire was broken and damage was caused for the leveling ground. There was fencing created by the Forest Department. Thus on

the date of the incident, wire fencing was found to be broken and this was done after getting order of temporary injunction by respondent No.2. Temporary injunction was given on 30-7-2012 and the incident took place on 23-8-2012. F.I.R. No.4/2014 was registered on 11-3-2014 on the basis of order made by the learned Judicial Magistrate dated 4-3-2014 on the private complaint filed on 30-12-2013 by present respondent No.2. It can be said that the Forest Department had taken action as provided by law. If there was temporary injunction, the injunction was in respect of the property of the respondent No.2 and it is the case of the Forest Department that only after taking measurement fencing was erected and it was done much before the order of injunction. Unfortunately, civil court did not take care to ascertain the state of affairs before granting the relief and even Court Commissioner was not appointed to bring the condition of the disputed land on record. Due to these circumstances and as the suit is not yet decided and as there is record of measurement taken through surveyor by the present applicants it cannot be said that the Forest Department had made encroachment or the Forest Department had any reason to have quarrel

with the present respondent No.2. Thus this Court holds that civil court can decide the dispute between the parties and it will be abuse of process of law if the case is filed against the present applicants, employees of the Forest Department and they are asked to face the trial for the offences. In the result, the application is allowed. Relief is granted in favour of the applicants in terms of prayer clause (B). Rule made absolute in those terms.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

rs1