

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

952 WRIT PETITION NO. 12640 OF 2018

ABDUL RAHEMAN SHAIKH ABOOD AMODI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Faruk V Patel Shaikh
AGP for Respondents: Mr. S.B. Narwade.

CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.
DATE : 21ST NOVEMBER, 2018.

PER COURT:

This petition takes exception to the impugned notice bearing O.W. NO. _2018/Jama-1/Kavi dated 6th November, 2018.

2. The learned counsel for the petitioner invites our attention to the alleged agreement of sale dated 22.5.2014 is written on stamp of Rs. 100. Relying upon the contents of the said agreement, he asserts his right in respect of a farm house situated at Gat No. 119 of village Abdimandi, Taluka, Aurangabad. He submits that said farm house is in Gat No. 119 and is in possession of the petitioner on the basis of aforesaid agreement to sale. In the impugned notice, there is a reference to the unauthorized construction in Gat no. 37 and the petitioner has nothing to do with said Gat No.37. Accordingly, pursuant to the receipt of impugned notice, he has filed reply to the concerned authorities. He submits that in similar fact situation in W.P. No. 12565 of 2018 (Amiroddin s/o Shamshuddin Shaikh vs. State of Maharashtra &ors.) this court has issued notice and protected possession of

the said petitioner. Therefore, he prays that in the present petition also, possession of the petitioner over the farm house may be protected.

3. On the other hand, learned AGP appearing for the State submits that the alleged agreement to sale is on stamp of Rs. 100 and the same is not even notarized. He submits that if the petitioner asserts that he is in possession, owner or possess the title of the said farm house, in that case, some document registered before the Sub-Registrar under the Registration Act, 1908, should have been placed on record. It is submitted that the petitioner's claim that he is in possession and owner of the farm house situated in Gat No. 119, is ill-founded and therefore, this court may not invoke the extraordinary writ jurisdiction and entertain the present petition.

4. We have given careful consideration to the submission advanced by the counsel appearing on behalf of petitioner and learned AGP for the State.

5. Admittedly, there is no document registered as required under the Registration Act, duly stamped under the Indian Stamps Act, 1899 and, therefore, we are unable to accept the submission of the counsel appearing for the petitioner that the petitioner is the owner and in possession of said land or possesses the title of the farm house situated in Gat No. 119 at village Abdi-Mandi.

6. Upon comparison of the facts in present writ petition viz-a-viz Writ petition No. 12565 of 2018, the facts of the said writ petition are

altogether different. In that case, the petitioner therein, has stated his relation with the original land owner Hafizoddin, as a grand-son. In the present petition, the petitioner asserts his right in respect of the farm house in Gat No.119 on the basis of the alleged agreement of sale allegedly executed on 22.5.2014, which is not even notarized leave aside registered under the Registration Act,1908.

7. In that view of the matter, we are unable to persuade ourselves to invoke the extraordinary writ jurisdiction under Article 226 of the Constitution of India, to entertain the present petition. Hence, the writ petition stands rejected.

[K.K. SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-