

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2435 OF 2018

1. Santosh Balkrishna Joshi,
Age: 48 yrs., Occ: Sarpanch,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
2. Ganpat Maroti Adhav,
Age: 50 yrs., Occ: Agriculture,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
3. Tarabai Dinkar Jadhav,
Age: 50 yrs., Occ: Labour,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
4. Kailas Dashrath Rahane,
Age: 46 yrs., Occ: Agriculture,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
5. Vilas Dashrath Rahane,
Age: 44 yrs., Occ: Labour
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
6. Baban Kisan Kale,
Age: 68 yrs., Occ: Agri,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
7. Suresh Barku Rahane,
Age: 49 yrs., Occ: Service,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.

8. Dilip Dashrath Rahane,
Age: 40 yrs., Occ: Labour,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
9. Lilabai Shantinath Jite,
Age: 42 yrs., Occ: Labour,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
10. Laxman Rayaji Golhar,
Age: 64 yrs., Occ: ,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
11. Kisan Keru Jadhav,
Age: 75 yrs., Occ: ,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
12. Ambadas Laxman Golhar,
Age: 42 yrs., Occ: Labour,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
13. Kailas Laxman Golhar,
Age: 35 yrs., Occ: Driver,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
14. Vithhal Laxman Golhar,
Age: 38 yrs., Occ: Labour,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.
15. Sheku Damodar Admane,
Age: 45 yrs., Occ: Labour,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.

... APPLICANTS

VERSUS

1. The State of Maharashtra,
Through Khultabad Police Station,
District Aurangabad.
2. Ambadas Pandurang Trimbake,
Age: 55 yrs, Occu: ,
R/o. Golegaon Tq. Khultabad,
Dist: Aurangabad.

... **RESPONDENTS**

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Mr. Pavan P. Uttarwar, Advocate for Applicants.

Mr. A. S. Shinde, APP for Respondent No.1 / State.

Mr. A. L. Kanade, Advocate for Respondent No.2.

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CORAM : **T. V. NALAWADE &
K. K. SONAWANE, JJ.**

DATE : 22nd July, 2019.

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

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed for relief of quashing of FIR No.196 of 2018, registered with Khultabad Police Station, District Aurangabad, for the offences punishable under Sections 3(1)(f)(g), 3(2)(V)(a) of the Scheduled Castes and Scheduled Tribes (Prevention

of Atrocities) Act, 1989 and Section 506 read with 34 of the Indian Penal Code and for relief of quashing of case filed in this crime bearing R.C.C. No.248 of 2018, which is pending in the Court of Special Judge appointed under the aforesaid Act.

3 The crime is registered on the basis of report given by Respondent No.2, Ambadas Trimbake. It is his contention that he is owner of land Gat No.132 to the extent of 40 Ares situated at village Gole, Taluka Khultabad. It is his contention that as many as 18 persons have made encroachment over his land by making construction of houses and they have illegally taken possession of those portions from him. It is contended that these persons, Applicants have created false record also to show the ownership. It is contended that even village *Sarpanch* made encroachment over his land and construction of Zilla Parishad school is going on, on his land.

4 It is the contention of informant that he belongs to scheduled caste and the disputed land is the source of income to him. It is contended that due to fear of Applicants, they have left the place and they are living at other place. It is contended that the land had

come to his predecessor and it was in possession of his predecessor right from the year 1955. It is contended that the *Sarpanch* is instigating others to take possession illegally of remaining portion and they have committed aforesaid offences.

5 The learned counsel for Respondent has produced some record to show that some mutations are made in respect of aforesaid land showing that land admeasuring 40 Ares was given to his predecessor by way of regularization of encroachment. The order was shown to be made by Tahsildar. In view of these circumstances, the learned counsel for Respondent was asked to produce record of allotment. The allotment could not have been made by Tahsildar. No such order came to be produced. The Government record shows that there are only aforesaid mutations, but they are not in respect of entire portion of Gat No.132. There is map prepared by survey department, which is produced by the Applicants. The map shows that in Gat No.132, there are structures of Zilla Parishad School and of many houses. There is a temple of Maruti also. Supply of electricity is there by Electricity Board. Some portion is marked in this map to show that the portion is with the Respondent, informant.

6 The submissions made and record show that there is no record of allotment of any portion except the mutation entry made by Talathi in favour of Respondent, informant. The dispute is taken to the revenue authority and the dispute is still pending there. Dispute is filed by *Village Panchayat* to challenge the aforesaid mutations. It appears that suit is also filed by some of the Applicants against the informant for relief of perpetual injunction. The submissions made show that for more than 12 years prior to the date of FIR, structures of Applicants were there. In view of these circumstances, in ordinary course, if the informant is aggrieved by the encroachments, he ought to have taken proper steps like filing proper suit in Civil Court, but that is not done and after more than 12 years, the informant approached police for using the provisions of aforesaid special enactment.

7 For showing that the informant was wrongfully dispossessed from the land, it is necessary for the informant to show that he was in possession and the Applicants have forcibly and wrongfully dispossessed him from his land. The circumstances that the Applicants were making construction many years back and even

school of Zilla Parishad came to be constructed, but the informant kept mum, are sufficient to infer that probably he has no record to show that any portion of the land is allotted to him. It can be said that for some time, his predecessor was in possession, but that was due to encroachment made by him. It is Gairan land. In view of these circumstances, this Court holds that it is not possible to infer that the informant was wrongfully dispossessed from this property and thereby the aforesaid offences are committed by the Applicants. This Court holds that relief needs to be granted to the Applicants. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clauses (B) and (B-1).
- III. Rule is made absolute in those terms.

[K. K. SONAWANE, J.]

[T. V. NALAWADE, J.]