

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

PUBLIC INTEREST LITIGATION NO.146 of 2019

Damodhar S/o. Sanduji Pagare ... Petitioner

VERSUS

The State of Maharashtra and anr. ... Respondents

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Mr. Rahul O. Awasarmol, Advocate for the Petitioner;
Mr. S.P. Sonpawle, A.G.P. for Respondent Nos. 1 and 2.

....

**CORAM : PRASANNA B. VARALE AND
R.G. AVACHAT, JJ**

DATED : 05th FEBRUARY, 2020

PER COURT:-

. Heard the learned counsel for the petitioner at length.

2. On perusal of the order of this Court dated 29.08.2019 at the outset, we put a query to learned counsel appearing for the petitioner as to what was the prayer made in the Criminal Writ Petition No.1335/2019. The learned counsel read out the prayer and that prayer is an identical prayer of prayer clause 'B' in this Public Interest Litigation. It is then submitted by the learned counsel that though the prayer is the same,

there is some change in the pleadings in the present petition so as to seek conversion from Writ Petition to Public Interest Litigation. It is also submitted by the learned counsel in view of the order of the Division Bench dated 21.11.2019, the petitioner had deposited an amount of Rs.50,000/- in this court to show his *bona fides*. As it is the bone of contention of the learned counsel that the cause of public interest is espoused in the petition and accordingly, the prayer is made.

3. We have gone through the pleadings of the petition and the annexures thoroughly and also heard the submissions of the learned counsel at length. It was an attempt of the learned counsel to submit before this Court firstly; by inviting our attention to the order placed on record dated 11.07.2019. Perusal of this order, it clearly reflects that though the first appellate authority has passed the order rejecting the application, the first appellate authority specifically informed the petitioner that he can avail the remedy of Second Appeal and then the order of the first appellate authority concludes with the designation and address of the second appellate authority so that the petitioner can approach the second appellate authority having any grievance against the order of first appellate

authority. Again on a specific query to the learned counsel that if this is the fact situation, whether the petitioner approached the second appellate authority, the learned counsel made only submission that the conclusion drawn by the first appellate authority was erroneous. Now, this cannot be an explanation for not approaching the second appellate authority. On the contrary, if the conclusions were erroneous, the petitioner could have certainly approached the second appellate authority with this pleading that the conclusions drawn by the first appellate authority are erroneous, but for the reasons best known to the petitioner, the petitioner had not availed this remedy.

4. Now, coming to the second submission of the learned counsel for the petitioner, it is submitted that the document, which is submitted in the proceeding is a forged document and this was misused by a party to derive the benefit from that document. In support of this submission, the learned counsel invited out attention to the document in *urdu* placed at Exhibit 'A'. On another query that whether there is an authorised and certified translation of this *urdu* document, the learned counsel invited out attention to page 29 to submit that this translation was supplied by

that very party in some proceedings and reiterate the submission that this is a forged document. In view of this submission, we put a query to the learned counsel that if it is the submission of the petitioner that this is a fabricated document and a party is deriving the benefit by misusing this document, what steps are taken by the petitioner to approach the law enforcing agency. To this, our attention was invited to inter-se communication between the Collector and the Superintendent of Police (Rural), Ahmednagar placed on record at page 168 of the paper book of the petition. Perusal of this document shows that the Collector made a reference to the representation submitted by the petitioner to him and then informed the Superintendent of Police that the grievance raised by the petitioner is about the preparation of a forged and fabricated documents, and about danger to the life of the petitioner and his family. The Collector requested to Superintendent of Police to conduct appropriate enquiry and inform the petitioner about the action taken.

5. Then, the learned counsel made a submission before this Court that he had also approached the Collector by an another representation and our attention was invited to page 169 of the paper book of the petition. This

was an application submitted to the Collector on *Lokshahi Din*. On perusal of this document, it clearly shows that the entire grievance of the petition is in respect of agricultural land as an *Inam* land allotted to the petitioner. Then, there is also reference to certain proceedings in respect of the revenue records initiated before the Sub Divisional Officer. The representation also refers to the proceeding initiated by one Laxman Yadavrao Shinde before the learned Civil Judge, Aurangabad and it is stated in the representation that the Civil Suit No.542/2018 is pending before the learned Civil Judge, Aurangabad and the learned Civil Judge, Aurangabad rejected an application for an injunction. There is another document placed on record at page 182, this is addressed to the Police Inspector, Police Station Wadodbazar, Tq. Phulanbri, Dist. Aurangabad. On reading of this document, it reveals that there is no reference to the proceedings initiated before the Sub Divisional Officer, Paithan. Then, there is a reference to the order passed on 08.05.2018. Then, it is also stated in this application that there was some interim order passed by the Civil Court, namely; directing the parties to maintain status quo and that order was subsequently vacated. This document concludes with a

statement that certain fabricated documents are presented in a Court proceeding namely; the appeal. Now, if that was the grievance of the petitioner, one can safely say that nothing prevented the petitioner to apprise the competent Court and then pray for appropriate orders and if the petitioner has chosen not to undertake this exercise, then, it is only his will and wish and for the best reasons known to the petitioner.

6. There is a document placed on record, i.e. an order passed by the Judicial Magistrate, First Class, Paithan dated 31.10.2018, whereby the learned Magistrate directs the Officer Incharge, Police Station Wadodbazar to investigate and submit report vide Section 202 of the Criminal Procedure Code. There is nothing to show that who had filed this complaint and on the query to the learned counsel to this effect, the learned counsel invited our attention to the contentions raised on page 6 in para 1.6 of the petition. Perusal of paragraph 1.6 clearly shows that these contentions are in respect of the civil proceeding namely; R.C.S. No.542/2018 a temporary injunction application and rejection order of the temporary injunction application dated 12.10.2018.

7. Thus, considering all the above referred facts, in our opinion, there is hardly any element to treat this petition as a Public Interest Litigation, as such, we are not inclined to entertain the petition as Public Interest Litigation. For all the above referred grounds, we dismiss the petition with liberty to the petitioner to avail other appropriate remedies if so advised.

8. The amount deposited by the petitioner in this Court is permitted to be withdrawn.

(R.G. AVACHAT)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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