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

901 WRIT PETITION NO.5972 OF 2020

**ASHOK GANESH DUBE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Mr N. R. Thorat, Advocate for petitioner;
Mr S. R. Yadav-Lonikar, A.G.P. for respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 30th June, 2021

PER COURT:

1. By this petition, the petitioner has put forth prayer clauses (B), (C), (D) and (E) as under :

“(B) Kindly direct respondent to decide or take action in application dated 02.05.2016 and 01.01.2016 submitted by petitioner.

(C) Kindly declare and hold that, servant of the State violate the fundamental right of the petitioner therefore, respondent liable to pay compensation.

(D) Kindly be declared and hold that, Police authority illegally deliver peaceful possession of the petitioner to the one Jatte and his relative therefore, petitioner fundamental

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right is violate therefore, State is liable to pay compensation Rs.90 Lacs.

(E) Kindly be declared and hold that, the petitioner is entitled for compensation of Rs.90 Lacs for violation of fundamental right.”

2. We have considered the extensive submissions of the learned Advocate for the petitioner and the learned A.G.P. on behalf of all the respondents. It needs to be noted that the petitioner appears to be in litigation with Manohar Bandappa Jatte with regard to the cultivation of lands Survey Nos.109, 111/1 and 112/1. However, the said Manohar Jatte has not been added as a respondent in this petition. This petition, therefore, suffers from non-joinder of proper party.

3. The petitioner prays that this Court should initiate action on the basis of his applications dated 01/01/2016 and 02/05/2016. The said two applications are placed on record.

4. We find from the record that the document dated 01/01/2016 is not a representation, but is an affidavit sworn by one Smt. Padmini Ganesh Dube, who is not the petitioner before us. By the said application, it is contended that 45 Acres of land in village Lohara, Tq.

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Lohara, Dist. Osmanabad Survey Nos. 109, 111/1 and 112/1, ever since the time of the father-in-law of Smt. Padmini i.e. late Devidasrao Narayanprasad Rajput (Dube), was being cultivated. One, late Bandappa Jatte had allegedly obtained the signature of Devidasrao in 1960 in the presence of the Talathi and the 7/12 extract was accordingly altered to show that Jatte was in possession of the said land. It was further alleged that late Bandappa Jatte was a money lender and was illegally operating his business of money lending. It was alleged in the affidavit that Smt. Padmini has the possession of the said land.

5. It is then submitted that her husband was a simpleton and taking advantage of his ignorance, 10 Acres of lands were retained in the possession of the Jatte family. Smt. Padmini is not aware as to how that portion of the land went to the Jatte family. There are several other allegations made in the affidavit against Police Officers as well. It is claimed that on 16/12/2015, Police Inspector Shri. Santosh Gaikwad granted police protection to the Jatte family, after they deposited requisite charges in the police station and 35 Acres of land which was being cultivated by Smt. Padmini was taken over by

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dispossessing her and the said land in Survey Nos.109, 111 and 112 was handed over to the Jatte family.

6. It is then contended that the Jatte family does not have any judicial pronouncement in their favour by which they could be said to be the title holder of the property. It was then prayed through the said affidavit that the Police Department should initiate action against Police Inspector Shri. Gaikwad for granting police protection to the Jatte family and for being party to the forcible dispossession of Smt. Padmini.

7. The learned A.G.P. points out that there are several civil proceedings pending between the Jatte family and the petitioner's family. The land at issue in Survey Nos.109, 111/1 and 112/1 is the subject matter of litigation. R.C.S. Nos.3/2016, 109/2016, 110/2016, 111/2016, 112/2016, 113/2016 and 239/2016 are pending before the concerned Courts. The petitioner himself has forwarded a letter to the Police Inspector, Police Station, Lohara, dated 27/01/2017, in which he has mentioned about these pending cases. He has also made a

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statement that one proceeding is pending before the Bombay High Court at the Aurangabad Bench.

8. The learned A.G.P., therefore, submits that as the petitioner's family may have been dispossessed as per his claim by the Jatte family, he is blaming the police authorities since police protection was granted on payment of charges.

9. The learned A.G.P. further points out that R.C.S. No.109/2016 was filed by Manohar Bandappa Jatte and copy of the complaint is placed before this Court. Other civil suits filed by Basavraj Bandappa Jatte (R.C.S. No.110/2016), Shantirappa Bandappa Jatte (R.C.S. No.111/2016), Suresh Bandappa Jatte (R.C.S. No.112/2016) and Nagnath Bandappa Jatte (R.C.S. Nos.113/2016 and 114/2016), are pending before the Court.

10. The learned Advocate for the petitioner submits that this petition was filed on 25/07/2017 and was initially dismissed for non-removal of office objections. It was then restored by an order dated 16/08/2019 in Civil Application No.9793/2019. Thereafter, the

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petitioner did not circulate this matter which was registered in 2020 and it was on the Court motion, that this matter was listed before this Court on 23/06/2021 and today. He, however, submits that during the pendency of this petition, injunction against the petitioner has been granted in favour of the Jatte family in the pending civil suit.

11. We are of the view that as the petitioner has been dispossessed and there is an injunction operating against him and his relatives in the suit filed by the Jatte family, the petitioner is indulging in making allegations against the police officers. It is conceded that there is an injunction operating against the petitioner, and the Jatte family is in possession of the suit land for more than five years.

12. We find that a dispute exists between the petitioner/his family members and the Jatte family members as regards the right of ownership and cultivation over the land at issue. Based on disputed questions and allegations, this Court would not exercise its extraordinary writ jurisdiction under Article 226 of the Constitution and presume that the police officer is guilty of granting police protection on the allegations being made by the petitioner.

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13. In view of the above, we do not find that this is a fit case for exercising our writ jurisdiction. The petition is, therefore, dismissed.

14. At this juncture, the learned Advocate for the petitioner submits that since several civil suits including some proceedings before the Revenue Authority, are pending for more than five years, this Court may issue an order to the learned Trial Court to proceed with the trial in the said suits, expeditiously and decide the said suits within a particular period.

15. In view of the above, since an innocuous relief is being sought in the nature of expediting the pending suits, we are accepting the request on behalf of the petitioner and we request the Trial Court to decide the pending civil suits (R.C.S. No.111/2016 to R.C.S. No. 114/2016, which are pending before the same Trial Court), expeditiously and preferably within a period of eighteen months from today.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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