

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.332 OF 2015

- 1) Ujjal Kumar S/o Siddeshwar Upadhaya
Aged about 57 years, Occ. Business,
R/o 11, Queens Park, Kolkata – 700019
- 2) Arun s/o Krishnarao Hazare,
Aged about 63 years, Occ. Retired,
R/o B/103, Ganesh Appt., Kotwal Nagar,
Nagpur – 440022
- 3) Wasudeo S/o Pandurang Gurve
Aged about 65 years, Occ. Retired,
R/o- Flat No.3/7 Visharam Appts.
Behind Rajabaksha Hanuman Mandir,
Nagpur.
- 4) Prakash s/o Krishnarao Gandhi
Aged about 57 years, Occ. Retired,
R/o G-4 Apoorva Sahwas Appt.,
162 Pande Layout, Khamla, Nagpur – 440025
- 5) Champat s/o Punjaram Aswale
Aged about 66 years, Occ. Retired,
R/o Railway Station Road,
Patil Nagar, Bhadrawati.

..... PETITIONERS

// VERSUS //

- 1) State of Maharashtra through
Police Station Officer, Bhadrawati,
Police Station, Tah. Bhadrawati,
Dist. Chandrapur
- 2) Shri Vinod S/o Kawduji Khobragade
Aged about 42 years, Occ. Talathi,
R/o Ashirwad Nagar, Nagpur Highway
Road, Warora, Distt, Chandrapur.
Dhanora, District : Gadchiroli

.... RESPONDENTS

Mr. S. C. Mehadia, Advocate for petitioners
Mr. A. S. Ashsirgade, APP for respondent no.1
Ms. Mallika Yaduka, Advocate h/f Mr. S. P. Bhandarkar, Advocate
for respondent no.2

**CORAM : MRS. SWAPNA JOSHI AND
AVINASH G. GHAROTE, JJ.**

DATE : 18/08/2021

ORAL JUDGMENT : (PER:- AVINASH G. GHAROTE, J.)

Heard Mr. Mehadia, learned counsel for the petitioners, Ms. Mallika Yaduka, learned counsel for respondent no.2 and Mr. Ashirgade, learned APP for respondent no.1.

2. At the outset, though we find that an alternate remedy is available to the petitioners, considering the petition challenging the impugned order, passed by the learned Magistrate under Section 156(3) of the Cr. P. C, however, as the petition has been admitted by the order dated 13.01.2016 and stay has been already granted to the impugned order by earlier order dated 17.04.2015, we deem it appropriate that, considering the facts, we exercise jurisdiction under Article 226 of the Constitution of India to entertain the petition.

3. The petition challenges the order dated 31.03.2015, passed by the Judicial Magistrate First Class, Bhadrawati, under Section 156(3)

of Cr. P. C., by which the respondent No.2, had sought registration of offences under Sections 3(1)(x), 3(ii)(vii) and 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 120-B, 167, 177, 171-C, 211, 212, 331, 378, 406, 409, 420, 431, and 506 read with Section 34 of the Indian Penal Code and Section 21(6) of Mines and Mineral Concession Rules, 1960, against the petitioners. It is material to note that a similar application was earlier filed by respondent no.2 being Regular Criminal Case No. 58 of 2013 under Section 156(3) of the Cr. P. C., which came to be rejected by an order dated 01.08.2013. Another application bearing Misc. Criminal Application No.24 of 2014 filed by the respondent no.2 again under Section 156(3) of the Cr. P. C. made to same fate of rejection by an order dated 19.03.2014. Third application came to be filed bearing Misc. Criminal Application No.175 of 2014 for registration of the offences as indicated above, in which, by the impugned order dated 31.03.2015, the learned Judicial Magistrate First Class declined to issue directions for registration of the offences under Sections 211, 212, 409, 431, 171-C of the Indian Penal Code and Sections 3(1)(x), 3(ii)(vii) and 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, however, directed registration of an offence for investigation under Section 379 read with Section 34 of the Indian Penal Code as to whether the non-applicants 2 to 6 therein / petitioners herein had

illegally obtained the land from the villagers, not covered by any land acquisition award or lease and extracted coal and thereby evaded the land revenue, royalty and surface rent.

4. Learned counsel Mr. Mehadia, takes exception to the impugned order on the ground of rejection of the similar applications earlier in point of time. That apart he contends that there is no locus in the respondent no.2, nor does the discussion, issuing a direction to register of an offence under Section 379 of the Indian Penal Code, has any logical reason.

5. Ms. Mallika Yaduka, learned counsel for the respondent no.2 submits, that since the learned Judicial Magistrate First Class was satisfied with existence of a *prima facie* case, therefore, the directions have been issued.

6. Mr. Ashirgade, learned APP, supports the impugned order.

7. The fact that the earlier complaints filed by the respondent no.2, on similar set of facts, and their rejection by the orders dated 01.08.2013 as well as 19.03.2014 are the matter of record. Insofar as the allegations, that the land of villagers not covered in the land

acquisition award or lease has been taken possession of and coal has been extracted therefrom are concerned, it is pertinent to note, that there is no single complaint in this regard by any of the villagers complaining of the same. Insofar as the contentions, that there is an evasion of land revenue, royalty and surface rent are concerned, the affidavit of the respondent no.1 in para – 6 clearly indicates that the royalty has been paid for the extent of coal extracted and there is no complaint regarding evasion of royalty and surface rent or for that matter the land revenue on the part of the respondent no.1. The purpose therefore, of passing the impugned order remains clearly inexplicable. A perusal of the impugned order and specifically para - 29, which is the only reason for issuing the direction, indicates that the same does not consider any complaint by villagers or for that matter, the officials of the respondent no.1 regarding any evasion of land revenue, royalty and surface rent. It is also not the case of the respondent no.2, that there has been excavation of coal from his land for which compensation or royalty is not paid. In fact, there is an admission that the land owned by him, has not been acquired at all and therefore, is unaffected by the acquisition for the purpose of excavation of coal. This being the position, apart from absence of locus to respondent no.2, there is absolutely no material whatsoever for the learned Judicial Magistrate First Class, to have arrived at a finding of a *prima facie* existence of

material or circumstances, so as to order registration of an offence under Section 379 of the Indian Penal Code and investigation in that regard. When the primary person affected by such a loss of land revenue, royalty and surface rent namely the Revenue Authority, deny any such evasion, issuance of such a direction on the behest of respondent no.2 alone, whose land is not acquired at all and therefore, is not affected, clearly is untenable in law. That being the position, the impugned order dated 31.03.2015, cannot be sustained in law, the same is therefore quashed and set aside and the complaint filed by the respondent no.2 under Section 156(3) of Cr. P. C. is dismissed. Accordingly, the Petition is allowed in the above terms. There shall be no order as to costs.

(AVINASH G. GHAROTE, J)

(MRS. SWAPNA JOSHI J.)