

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

950 CRIMINAL WRIT PETITION NO.667 OF 2021

VYANKAT KONDIBA SHINDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. M.P. Kale, Advocate for petitioners
Mr. A.M. Phule, APP for respondent Nos.1 to 4

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : 16th DECEMBER, 2022

ORDER :

1 Heard learned Advocate Mr. M.P. Kale for petitioners and learned APP Mr. A.M. Phule for respondent Nos.1 to 4.

2 It will not be out of place to mention here that the petition stood dismissed as withdrawn as against petitioner Nos.1 to 7 as per the order passed by this Court on 25.01.2022. The matter proceeded for the reliefs claimed by the petitioner Nos.8 to 11, who are all ladies.

3 It is to be noted that the First Information Report came to be lodged by Police Constable when he was on duty in view of the fact that the

superior had ordered to give police protection to one Santosh Bhanudas Mandade at his field in village Gondri on 10.03.2021.

4 Learned Advocate for the petitioners has taken us through the various civil litigations and submitted that the possession was with the petitioners and said Satish Mandade could not have asked for police protection. He has also taken us through the charge sheet which consists of the spot panchnama also. Another fact, which can be seen from the First Information Report as well as the charge sheet, that the Talathi by name Janbahadur Kalbolya Chavan was also present when the incident took place. It is stated that when Satish Mandade started the work of putting wire fencing with the help of JCB, petitioner Nos.1 to 7 went to the spot and started obstruction. It is then stated that they were asked by Talathi as well as ASI Mr. Dongre and Beat Jamadar Mr. Lamture that they should produce any document regarding the land or even the Court's order but they had not shown any such document. Thus, it is to be noted that when the opportunity was given, it ought to have been availed by the petitioners. Thereafter, all of them had asked petitioner No.11, who is aged 60, to sit in front of JCB, which was intentional act and then petitioner Nos.8, 9 and 10 also obstructed the work. Thereafter also it is stated that Talathi gave phone call to Tahsildar and then on the basis of instructions of Tahsildar he again requested that

those documents, on which they want to rely should be shown to Tahsildar, but all of them refused. It was their say that if there is need for Tahsildar, then, he should come to the spot. Thereafter the Talathi had given knowledge to all the petitioners that if they behaved in such a way then offence would be registered against them. Thereafter, petitioner Nos.1 to 7 told that they do not want Tahsildar or Collector, but they have been told by their Advocate that unless there is Court's order they should not come out of the field. They reiterated that the land belongs to them and they are having possession. Thereafter, they rushed towards Satish Mandade, police intervened. Thus, the contents of the First Information Report would then attract the offences so also the statements of witnesses under Section 161 of the Code of Criminal Procedure would prima facie show that petitioner Nos.8 to 11 were the members of unlawful assembly and with common object they had obstructed the police authority as well as Talathi from discharging their duty. This Court, at this stage, cannot go into the aspect, as to whether police protection ought to have been granted or not. That would be a disputed question of fact and, therefore, though the petitioner Nos.8 to 11 are ladies, this will not be the fit case where the constitutional powers or inherent powers can be used in their favour. Even if a person is having some right over property and he might be having even right of defending his property; yet, there is a procedure laid down and when opportunity was given to show

some order in their favour the petitioners had not shown it. Therefore, it would be the point or subject-matter before the Trial Court in a full-fledged trial. Hence, the writ petition stands rejected.

(Abhay S. Waghwase, J.)

(Smt. Vibha Kankanwadi, J.)

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