

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

CRIMINAL WRIT PETITION NO. 1719 OF 2022

**JAYASHREE SANJAY KATKE
VS
THE STATE OF MAHARASHTRA AND OTHERS**

Mrs. Ansari Asfia Nuzhat, Advocate for the petitioner
Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 02nd DECEMBER, 2022

P. C.

1. Heard the learned advocates for the parties.
2. The petitioner has approached this court in exceptional circumstances, though there is remedy of filing of revision against the impugned order. It is pointed out that the petitioner purchased the property in parts first sale deed is 15-02-2014 and last one is dated 02-11-2022 by executing proper sale deeds from the original owner. Her name is also reflected in the PR card. In respect of the same properties, witnesses shown in the proceedings before the Tahasildar had filed civil suit bearing Special Civil Suit No. 66/2014. This petitioner is also

shown as defendant No.3 in the said suit. The suit came to be dismissed by the judgment and order dated 14-01-2000. The suit was for declaration that the sale deed in favour of this petitioner dated 15-02-2014 is null and void and not binding upon the plaintiffs. The applicant who moved before the Tahasildar under Section 145 of the Code of Criminal Procedure i.e. party No.1 is a purchaser from Sureshkumar and Anilkumar who had also lodged the suit for declaration. He stated that the property belongs to him and prayed that possession be handed to him. It is surprising to note that Anilkumar and Sureshkumar had also filed a suit against present respondent No.4. It is still pending.

3. Pending civil dispute between parties respondent No.4 filed proceeding under Section 145 of the Criminal Procedure Code. Tahasildar- respondent No.2 issued notice to the petitioner. The petitioner filed say pointing out all these proceedings to show that she is owner and possessor of the property on the basis of sale deeds executed by the original

owner. She has also pointed out that the suits which were filed the party No.1 claims to have purchased the property from the persons who have also lodged the civil suit. However, what clearly appears is that Tahasildar has passed the order on 28-11-2022 directing Police Inspector, Sadar Bazar Police Station, Jalna to put the party No.1 in possession. It is further directed to the present petitioner who is party No.2 not to cause any interference with the possession of the suit property. No boundaries or area is mentioned. This entire survey No. 10573, adm. 647.35 sq.mtrs out of which the dispute was raised in respect of property adm.487. It is a specific case of the petitioner that though the order is dated 28-11-2022, she received copy of the order on 1st December, 2022 in the evening hours. She specifically averred that only looking to the fact that next two days after one day are holidays the order is deliberately served on 1st December, 2022 in the evening.

4. Learned APP objected the petition saying that there is alternative remedy to file the revision before appropriate

forum and he submits that in view of the availability of alternate remedy the petition is not maintainable.

5. In this fact, and manner in which Tahasildar has exercised the powers, this petition can be very well entertain only to the extent of protecting the petitioner's interest in view of the availability of alternate remedy. It would be appropriate to direct the petitioner to approach the proper forum by availing alternative remedy within two weeks. However, for that period possession needs to be protected. Thus, following order:-

ORDER

- a] The writ petition is partly allowed.
- b] The impugned order dated 28-11-2022 bearing No. MG/CRPC-145/CR-02 issued by the Tahasildar, Jalna is stayed for a period of two weeks.
- c] Learned APP to inform the said order to the concerned authority.
- d] Parties to act upon authenticated copy of this order.

[KISHORE C. SANT, J.]