

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 3297 OF 2022

Hanumant K. Waghmode
& Others

.. Petitioners.

v/s.

The State of Maharashtra
& Others

.. Respondents.

Mr. Mahindra B. Deshmukh, for the Petitioners.

Mrs. M. P. Thakur, AGP for the Respondent-State.

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**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.**

DATED : 13th APRIL, 2022.

PC:-

We have heard Counsel for the Petitioners. The learned Counsel for the Petitioners submits that only on the basis of the Panchanama, the liability is fixed upon the Petitioners. The panchanama have been done in the slip shod manner without adhering to the procedure and the rules. Even the signature of the panchas are not appearing on the panchanama.

2 The learned Counsel further submits that panchanama is drawn in a format which was kept ready and only fill in the blanks have been done by inserting the names of the Petitioners. The learned Counsel submits that panchanama is not genuine. According to the learned Counsel, the property of the Petitioners are now put to auction. In that scenario, the Petitioners have approached this Court.

3 The learned AGP submits that before passing the orders, the show cause notice was issued to the Petitioners. The Petitioners did not reply to the show cause notice. The Petitioners have filed an appeal and in spite of that, they have filed the present Petition. The learned AGP further submits that Petitioners have also filed a suit.

4 In normal course, we would have not-suited the Petitioner on the ground of availing the multiple remedies at one and the same time.

5 The Petitioners have already filed an appeal, challenging the order of penalty imposed upon him. The Petitioners have also filed a Civil Suit, challenging the same and now the Petitioners have filed the present Petition. The Petitioners can not avail multiple remedies on the basis of same cause of action.

6 Considering that the property of the Petitioners is put to auction, we pass the following order:-

- (i) The Petitioner Nos.1, 2 and 3 jointly shall deposit Rs.10 lakhs with Respondent No.4 within three weeks from today;
- (ii) In case the Petitioners deposit the amount as directed, the Respondents shall not proceed against the properties of the Petitioners till the Appeal filed by the Petitioner is decided;
- (iii) In case the Petitioners deposit the amount as directed by this Court i.e. Rs. 10 lakhs, the Respondents shall not insist for deposit of 25% of the amount and the Appellate Authority shall decide the appeal on its own merits and in accordance with law and the facts on record. It would certainly consider the case put-forth by the Petitioner and the Respondents;

- (iv) In case the Petitioners do not deposit the amount as directed by this Court, the protection granted to the Petitioner shall come to an end.

7 Writ Petition is disposed of. No costs.

(VINAY JOSHI,J.)

(S.V.GANGAPURWALA,J.)