

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

CRIMINAL WRIT PETITION NO.509 OF 2022

Petitioner : 1. **Narayan s/o Nattuji Hale,**
Aged about 59 years, Occupation : Agriculturist,
R/o Sawanga Loni, Taluka – Warud,
District Amravati.

2. **Sanjay Nattuji Hale,**
Aged about 45 years, Occupation : Agriculturist,
R/o Sawanga Loni, Taluka – Warud,
District Amravati.

– Versus –

Respondents : 1. **The State of Maharashtra,**
Through Police Station Officer,
Police Station Jalalkheda,
Tq. Narkhed, Dist. Nagpur.

2. **ASI Anil Joshi,**
Buckal No.626, Police Station Jalalkheda,
Tq. Narkhed, Dist. Nagpur.

3. **Radhabai Nattuji Hale,**
Aged about 70 years, Occupation : Agriculturist,
R/o Sawanga-Loni, Tq. Warud, Dist. Amravati.

4. **Sunita w/o Lehegram Tavale,**
Aged about 42 years, Occupation : Agriculturist,
R/o Sawanga-Loni, Tq. Warud, Dist. Amravati.

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Mr. R.A. Bagde, Advocate for the Petitioners.
Mrs. M.H. Deshmukh, A.P.P for Respondent No.1.
Mr. G.N. Shinde, Advocate for Respondent Nos.3 & 4.

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CORAM : **VINAY JOSHI, J.**
DATE : **4th OCTOBER, 2022.**

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

02] The petitioners raised a challenged to the notice dated 20/06/2022 issued by the Police in terms of Section 149 of the Code of Criminal Procedure (Code). By the said notice, the Police have prevented the petitioners from entering into the disputed agricultural land till adjudication of lis by the Civil Court. In other words, the Police have issued order of injunction restraining the petitioners from entering into certain piece of land. No doubt, the Police Officer can interpose for prevention of commission of cognizable offence, however, they cannot issue order having colour of injunction. Similarly, the Division Bench of this Court in its judgment in the case of M/s. Rai Udyog Ltd. vs. State of Maharashtra & others – 2022 ALL MR (Cri) 2936 has expressed in paragraph 11 that while exercising power under Section 149 of the Code, the Police did not have the power or authority to issue order of injunction but the party shall approach to the civil Court. Thus, apparently the impugned action of the Police is not sustainable in the eyes of law.

03] Moreover, it is brought to the notice that the concerned land was owned by the petitioners' father and respondent Nos.3 and 4 are the

petitioners' mother and sister respectively, who are claiming right over the property. It was informed that already the petitioners have filed civil suit seeking cancellation of documents of will, which is pending. In the situation, the Civil Court is the appropriate authority to decide the related dispute. However, by any stretch of imagination, the Police cannot restrain a party under Section 149 of the Code from entering into the land.

04] In the result, the petition succeeds. The impugned notice dated 20/06/2022 is hereby quashed and set aside. Rule is made absolute in the above terms.

(VINAY JOSHI, J.)

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