

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 169 of 2023

Smt. Jayshree w/o Sanjay Katke,
Age 53 years, Occu.: Business,
Resident of Shersawar Colony,
Jalna, District Jalna.

...Petitioner

Versus

1. The State of Maharashtra,
Through Assistant Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad.
2. The Tahsildar,
Jalna, Tahsil Office, Jalna.
Through Assistant Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad.
3. The Police Inspector,
Sadar Bazar Police Station,
Jalna.
4. Sunil s/o Mohanlal Rathi,
Age : 53 years, Occu.: Business,
Resident of Sambhajinagar, Jalna.
District Jalna.
5. Sanjay s/o Tukaram Katke,
Age : 55 years, Occu.: Service,
Resident of Shersawar Colony,
Jalna.

...Respondents

Advocate for Petitioner : Smt. A. N. Ansari

APP for State/Respondents : Mr. P. N. Kutti

Advocate for Respondent No.4 : Mr. G. K. Naik Thigle

CORAM : KISHORE C. SANT, J.

RESERVED ON : 9th DECEMBER, 2022.

PRONOUNCED ON : 20th MARCH, 2023.

JUDGMENT :

Heard by consent taken up for final disposal.

1. This petition is arising out of the proceeding under Section 145 of the Code of Criminal Procedure. The petitioner before this Court is original Respondent before the Tahasildar, whereas respondent no.4 is the applicant in the said proceeding, wherein Tahasildar has directed to restore possession of the property with respondent no.4. The petitioner is restrained from interfering with the possession of respondent no.4. The said order was challenged by the petitioner by filing Revision Application No.75/2022 in the Court of learned Sessions Judge, Jalna, wherein the said Revision came to be rejected.

2. The facts as appeared from the impugned order are that:

the respondent lodged FIR on 8.11.2022 with Sadabazar Police Station, Jalna, alleging that he is dispossessed from his property ad-measuring 487 sq. mtrs. from CTS 10573. The complaint was filed that out of area admeasuring 657.35 sq. mtrs., land admeasuring 487 sq. meters. is purchased from one Anil Malpani and Suresh Malpani by sale deed dated 01.07.2021 and they are carrying a marble business on the said property. On 03.11.2022, this petitioner took forceful possession by breaking open the lock of the shop and by removing the board of the shop. It is alleged that this petitioner has also filed a case under Atrocities Act. The police on the basis of this FIR, reported to the Tahasildar that there is likely to be breath of peace.

3. On the basis of report of the police, the Tahasildar issued notice to the petitioner. The petitioner filed her say stating that she has

purchased the property from the original owner of the property to the extent of 647.35 Sq. meters. That was owned by one Narsingh Rao. Said Narsingh Rao gave this land to his sister Laxmibai. Said Laxmibai sold land to Ratanlal in 2002 to extent of 487 sq. meters. However, she had not obtained consent of her son namely Surya Narayan and therefore Surya Narayan had filed a suit in the Civil Court, wherein it was held that there are six persons entitled to receive 1/6 share each. In 2021, said Malpani sold the land to Sunil Rathi that is present respondent no.4. However he did not pay the consideration amount to Malpani. Malpani therefore filed a suit for cancellation of the sale deed. Heirs of original owner came to know that the ancestral property is sold to Sunil and therefore they had taken objection in the office of City Survey Office taking objection to the sale deed in favour of Rathi, thus his name is still not recorded in the Revenue Record. It is further case of the petitioner that some of the legal heirs of Halbi family, original owner sold the land in favour of the petitioner. On

the basis of that even the entry is taken in the Revenue Record.

4. It is further case of the petitioner that since she has purchased the property from the original owner, she asked the respondent no.4 to hand over the possession. However he prayed two months' time to vacate the premises. It is her case that as respondent no.4 did not hand over possession as promised, she took possession of the land. In her say, it is stated that the respondent no.4 is trying to take possession by bringing pressure on the petitioner.

5. The Tahasildar held an enquiry on the basis of the documents submitted before him. After hearing the arguments, the Tahasildar held that looking to the value of the property, there is possibility of breach of peace and that the petitioner during the course of hearing accepted that she has taken possession on 03.10.2022. However in the FIR, it is shown that the

possession is taken on 03.11.2022. The petitioner told respondent no.4 to vacate the land. On the basis of affidavits of the Malapani, vendor of respondent no.4, it is held that the respondent and his brother are running a shop since prior to the sale deed in favour of petitioner. In the spot inspection, it was found that there is a board of the shop of respondent. The name of respondent is shown in the electricity bills showing that they have taken electricity connection in 2013. About the ownership, the Tahasildar stated that this question does not arise for consideration in proceeding under Section 145. It is held that earlier there was board in the name of respondent's shop, however thereafter the petitioner put her own board. It is found that the material on the spot was of marble shop. The Tahasildar further stated that it is accepted by the petitioner that the said material belonged to the respondent and ultimately passed the order as stated above.

6. The petitioner immediately approached this Court

by filing Writ Petition No.1719/2022 making out a case of immediate threat of dispossession. Since the petition was filed without availing any alternative remedy, this Court by order dated 02.12.2022 directed stay of the impugned order dated 28.11.2022 for a period of two weeks, so as to facilitate the parties to approach the Revisional Court. The petitioner filed Revision Petition No.75/2022 on various grounds giving all the details as to how she has purchased the property and how her vendors were true owners of the property etc. Secondly that there are suits pending between the parties, wherein the vendors of the respondent have approached the Court for cancellation of the sale deed.

7. The learned Sessions Judge by order dated 24.01.2023 dismissed the Revision Petition. It is thus, the petitioner is before this Court. The main submission of the learned Advocate for the petitioner is as follows :

. that All the Revenue Records stands in the name of

one Anil Rathi. The Tahasildar has relied upon the affidavits of two witnesses filed by Anil Kumar Malpani and Suresh Kumar Malpani. However the copies of those affidavits were not given and the same are relied upon by the Tahasildar. Thus, the petitioner is deprived of proper opportunity of hearing as she could not cross-examine the said witnesses.

8. The petitioner came to know about the said affidavits only on receipt of the order. There is already a suit filed by Malpani against respondent no.4 for cancellation of sale deed. Thus, the respondent no.4 is not owner of the property. In the order, no specific portion of the property is mentioned and therefore the order is vague. From the reading of the order, it is not clear as to of how much area, possession is to be restored by submitting that survey no.10573 sq. meters. is a large area out of which even as per the respondent, he is in possession only to the extent of 487 Sq. meters. Without proper details, the Tahasildar could not have

passed any order. The property is in the name of Anil Rathi. Even the shop of licence, electricity bills stand in the name of Anil Rathi, who has not filed any complaint still the Tahasildar passed an order.

. It is pointed out that the licence of shop shown to be a proprietary concern, wherein Anil Rathi is shown to be a proprietor. Thus, the respondent no.4 has no concern with the said property. The petitioner had already filed a complaint under the Atrocities Act on 17.10.2021. In the said case, evidence is given, the cross is also started and it is for this reason, the respondent is trying to bring pressure on the petitioner. The petitioner has established as to how she has purchased the property. On 08.11.2022, the respondent lodged FIR with the police station claiming that she was dispossessed on 03.11.2022, which shows that the FIR is afterthought. On the basis of FIR, the police lodged the report with the Tahasildar. The Tahasildar immediately issued notice on 16.11.2022. On 20.11.2022, the reply was filed and the order was passed by the Tahasildar in a hasty manner.

9. In response, learned Advocate for respondent no.4 submits that the specific portion need not be shown as the area is already known to everyone. The Tahasildar has properly scrutinized the evidence and the documents before him. The Tahasildar cannot decide the ownership rights of the parties and therefore the Tahasildar has rightly passed the order under Section 145. He submits that the proceeding needs to be decided on the basis of previous possession only. He pointed out from sub-section 6 of Section 145 that the proceeding was tenable before the Tahasildar. He submits that Tahasildar has clarified the description of the property in the body of the judgment and he prays for dismissal of the petition.

10. The learned Advocate relied upon the judgment reported in AIR 2004 SC 115 in the case of **Shanti Kumar Panda Vs. Shakuntala Devi**. It is observed that if the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such position of the said

subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

. He further submits that even as per petitioner's own case this petitioner took possession on 03.10.2022. Therefore the proceeding was initiated within two months of the alleged dispossession and he prays for dismissal of the petition.

11. Having heard both the parties and after going through the judgment and order impugned herein, it is seen that the learned Tahasildar had passed the order after hearing the parties. So far as principal of natural justice is concerned, it is seen that the affidavits which were filed by the respondent no.4, were not given to the petitioner. Accepting that the

Tahasildar has not considered the aspect that the property stands in the name of Anil Rathi and still he has not come forward to raise any dispute. All the records such as licence under Shop Act stands in the name of Anil Rathi. The affidavits find a reference in the order passed by the Tahasildar. From the order, it is seen that submissions were advanced by the petitioner on those affidavits. No grievance appears to have been raised before the Tahasildar about not giving copies of the affidavits. No such ground was raised in the Revision Petition. For the first time, such ground is raised in this petition. Thus no much weightage needs to be given to this submission. It is clear that the parties are litigating in the Civil Court where the rights would be decided. From the case of the petitioner itself, it is clear that she purchased the property from the heirs of the original owner. It is her own story that she requested the respondent to vacate the premises. However in spite of that, he did not vacate the premises and therefore she took possession. This

clearly shows that the respondent was in possession of the property.

12. The judgment relied upon by the learned Advocate for respondent no.4 in the case of Shanti Kumar Panda (supra), in which the Hon'ble Apex Court has discussed the powers under Sections 145, 146 of the Code and held the proceedings to be quasi-civil, quasi-criminal in nature. The purpose of the provision is only to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution. The Magistrate is thus confined to ascertain as to which of the party was in possession, till the period the entitlement to possession is determined by the Competent Court. In this case, it is clear that the parties are litigating in the Court. The sale deed in favour of the respondent is also under challenge. So all the questions can be decided by the Civil Court.

13. In view of these facts, now only grievance is about the apprehension of the petitioner that under the garb of this impugned order passed by the Magistrate. She will be dispossessed from her property. This apprehension is clearly ill founded as it is not a case that petitioner is put in possession of the property. It is her own case that she was not given possession after sale-deed in her favour.

14. This Court finds that the learned Sessions Judge has considered all the aspects, appreciated the material on record and has rightly passed the judgment. This Court finds that no case is made out calling for interference. The petition is therefore dismissed.

[KISHORE C. SANT, J.]

15. After pronounced of this judgment, the learned Advocate for the petitioner prayed that this order be

kept in abeyance for a period of two weeks, though it is opposed by the respondents. In view of this, this order is kept in abeyance for a period of two weeks from today.

[KISHORE C. SANT, J.]

NAJEEB..