

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.170 OF 2023

Mohammad Bahauddin Ziyauddin Kazi ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Mr. S.P. Brahme, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents – State
.....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 16th FEBRUARY, 2023

P.C. :

This is a petition under Article 226 of the
Constitution of India with the following prayers :

- (C) This Hon'ble Court may be pleased to issue appropriate writ order or directions to the respondents to take steps to protect the properties bearing Gat No.718, 719, 722, 723, 1109/1, 1109/2 situated at village Shevgaon, Taluka Shevgaon, District Ahmednagar from encroachment, erection of any structure or change of nature of utilization.

- (D) This Hon'ble Court may be pleased to issue appropriate writ order or direction to the respondents to maintain law and order situation at Shevgaon near the properties Gat No.718, 719, 722, 723, 1109/1, 1109/2 situated at village Shevgaon, Taluka Shevgaon, District Ahmednagar.
- (E) This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondents to take criminal action against the encroachers, perpetrators who are indulging illegal activities regarding the properties of the petitioners bearing Gat No.718, 719, 722, 723, 1109/1, 1109/2 situated at village Shevgaon, Taluka Shevgaon, District Ahmednagar.
- (F) This Hon'ble Court may be pleased to issue appropriate writ, order or directions to conduct an enquiry in respect of the encroachment or illegal occupation of the persons over properties bearing Gat No.718, 719, 722, 723, 1109/1, 1109/2 situated at village Shevgaon, Taluka Shevgaon, District Ahmednagar in order to protect the life, liberty and property of the petitioner.

2. Heard learned counsel for the petitioner and learned A.P.P. for the respondents – State. We have perused the record and considered the submissions advanced by learned counsel for the respective parties.

3. The petitioner claims to be the owner, in possession of the land under Gat No.718, 719, 722, 723, 1109/1, 1109/2 situated at village Shevgaon, Taluka Shevgaon, District Ahmednagar.

4. The records reveal that there was a dispute between the petitioner and his family members in respect of the subject lands. The suit filed by the petitioner was partly decreed and the petitioner was declared to be owner of 1/16th share in respect of the suit property situated at Shevgaon. The claim of the petitioner in respect of the property at Varur as well as the claim in the share of deceased Fazluddin Amiruddin was rejected. The trial Court had also allowed the counter claim filed by the trustees of Jama Masjid and declared that they are the owners and in possession of 3/4th share of the land except land Gat No.66 and 67 situated at village Varur. The petitioner as well as the trustees of Jama Masjid had challenged the said

order before the first appellate Court. By order dated 23/12/2004, the first appellate Court dismissed the Regular Civil Appeal filed by the petitioner as well as by the Trust and modified the decree of the trial Court to the extent of the counter claim. The first appellate Court declared that Jama Masjid to be the owner and modified the order in the counter claim and instead of Trustees declared Jama Masjid as owner of 3/4th share in the said property.

5. The petitioner has challenged the said order in Second Appeal No.1295/2005, which is pending before this Court. It is stated that, by order dated 26/3/2008, this Court directed the parties not to create any third party interest involved in the dispute pending the final disposal of the appeal. It is thus evident that civil dispute is pending between the parties in respect of the property which is the subject matter of this petition.

6. The petitioner claims that one of the family members of Aliyoddin donated 3/4th share of the land to Jama Masjid Trust. The said transaction is bad in law since the land in dispute cannot be donated as per the Mohammedan Law. The petitioner further claims that the Assistant Charity

Commissioner, Ahmednagar has included these properties in the name of Jama Masjid Trust to the extent of 50% share and the said order is under challenge in Appeal No.21/2020. The petitioner states that having learnt that the properties are likely to be included in the Wakf list, he submitted objections, in view of which inclusion of properties in Wakf list is kept in abeyance pending decision of the Civil Court. The petitioner has also disclosed that some of the residents of Shevgaon and Jama Masjid Trust have filed a Civil Suit No.316/2011 against the petitioner. The said suit is pending adjudication.

7. It is evident that Jama Masjid is claiming right over the property and dispute between the Trust and the petitioner is pending adjudication. The petitioner has not sought police protection to implement or enforce any order of the Court but under the guise of seeking a writ of mandamus, directing the police authorities to give protection, the petitioner has resorted to a short-cut measure to protect his property rights when civil dispute between the parties is pending before this Court and several disputed questions are involved.

8. The reasons for seeking the writ of mandamus, as spelt out in the petition are that the petitioner finds it difficult to

protect and safeguard land which is of huge area. The contention of the petitioner is that, several persons are trying to encroach upon the said lands and grab the same by using muscle power. It is stated that in the year 2013 some persons had tried to encroach upon portion of land Gat No.1109/2 and had tried to offer Namaz. Since the police had not taken cognizance of the offence, the petitioner had filed Criminal Writ Petition No.856/2013 which was disposed of by this Court vide order dated 27/9/2013. The petitioner states that despite the said order, some miscreants erected construction in the form of tin shed in Gat No.1109/1. It is further stated that, the land under Gat No.1109/2 has also been levelled for the purpose of conducting tournaments. The petitioner claims that the miscreants are spreading rumours that the petitioner is in illegal occupation of the land and that the land is actually of Jama Masjid Trust and is meant for use and occupation of people of Muslim community. It is stated that these miscreants have erected structures in the land which is in possession of the petitioner. It is also stated that, they have also tried to demarcate the land and make smaller plots. It is on this basis that the petitioner has sought the reliefs as quoted above.

9. Learned counsel for the petitioner submits that, the

police are duty bound to maintain law and order situation. This Court, by order dated 27/9/2013 in Criminal Writ Petition No.856/2013, has already directed the Superintendent of Police or the Deputy Superintendent of Police, Newasa to direct the Police Inspector, Shevgaon Police Station, to ensure maintaining law and order in respect of the disputed property and in particular in the light of the orders of the Civil Court. In the light of the said order, no further order is necessitated for maintaining law and order situation.

10. Issuance of writ of mandamus to protect the property of the petitioner, when the civil rights of the parties are pending adjudication, would be an abuse of process of Court.

11. In the light of above, we are not inclined to entertain the petition. Hence, the petition is dismissed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-