

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

CRIMINAL WRIT PETITION NO. 340 OF 2023

**RAJENDRA NARAYAN TELORE
VERSUS
VILAS NARAYAN TELORE AND ORS**

Mr. S. V. Dixit, Advocate for the petitioner
Mr. V. S. Badakh, APP for the respondent/State

CORAM : R. M. JOSHI, J.
RESERVED ON : 05/06/2023
PRONOUNCED ON : 13/06/2023

P.C. :-

1. This petition takes exception to order dated 11/11/2022 passed by Sessions Judge, Ahmednagar in Criminal Revision No. 72/2022 whereby the order passed by the Executive Magistrate dated 04/07/2022 in Chapter Case No. 5/2022, was set aside.

2. It is the case of the petitioner that as an agreement came to be executed by the owners of gut No. 575 admeasuring 4 Acres in favour of his father Narayan, and in pursuant thereto Narayan was put into the possession of the said land. It is his further case that since his father was unable to cultivate the said land and as petitioner was looking after his father he shown his readiness to purchase the said land from original owner. It is also claimed by the petitioner that his father handed over possession of the land to him

in the year 1997 and also executed and document his favour to that effect. Petitioner alleged that contesting respondents are obstructing his possession over the said land and on account of the said dispute several offences are registered against each other. As there was likelihood of a breach of peace owing to the said dispute, chapter proceeding bearing No. 5/2022 came to be initiated by Tahasildar and Executive Magistrate, Rahuri. By passing order dated 04/07/2022 Executive Magistrate has held that the petitioner is having possession of the land and house situated on gut No. 575 and that the respondents therein were restrained from obstructing his possession.

3. The contesting respondents challenged the said order by preferring an application under Section 397 of the Code of Criminal Procedure being Criminal Revision Application No. 72/2022, before Sessions Court, Ahmednagar. Revision was allowed by passing impugned order whereby the order passed by the Executive Magistrate in Chapter case No. 5/2022 on 04/07/2022 was set aside and chapter case was dismissed.

4. Learned counsel for the petitioner states that pursuant to the execution of affidavit dated 23/03/2007 his father Narayan Telore

has surrendered his rights in favour of petitioner. He further contended that in the year 1997 itself the possession of the land and house was made over to the petitioner. It is his further contention that the original owners by executing sale deed on 08/03/2021 duly registered on 12/03/2021 have transferred the right title and interest in the said property in favour of petitioner. It is his grievance that not only the Sessions Judge but the Civil Court also committed error in not considering the fact that in RCS No. 855/2018 the order of injunction was granted in favour of Narayan and not in favour of present contesting respondents. He further argued that there is a report of the concerned police station showing the likelihood of causing of breach of peace on account of the disputes between the parties, which is accepted by Executive Magistrate and therefore the order passed by invoking provision of Section 145 of Cr.P.C. was ought not to have been set aside.

5. Learned counsel for the contesting respondents opposed the said submission by pointing out the relevant provision of Section 145 of Cr.P.C. which contemplates the recording of reasons for the purpose of passing order under the said provision. He placed reliance on the judgment in case of ***Vishwanath Kashinath Virkar and others Vs. Nitinchand Keshavji Gala and others*** reported in

1995(2) Mh.L.J.664. In order to submit that unless the Magistrate is satisfied that dispute is likely to cause of breach of peace he has no jurisdiction to pass any order. In the present case, according to the counsel for the respondents without recording such satisfaction the Executive Magistrate has proceeded to pass order holding that the petitioner is in possession of the disputed property. Apart from this it is pointed out that there are orders passed by civil court in respect of the said property and it is not within the jurisdiction of the Magistrate to pass any contradictory order.

5. There is no dispute about the fact that the petitioner and contesting respondents are disputing the possession of each other over the property in question. It is further matter of record that number of reports are given by both sides against each other alleging criminal acts on their part. Section 145 of Cr.P.C. contemplates that essentially for the purpose of avoiding likelihood of breach of peace, power can be exercised by Executive Magistrate to pass appropriate order in respect of immovable property. For the said purpose the precondition is that such authority must be satisfied from the report of the police officer or upon the other information that a dispute is likely to cause breach of peace exists concerning any land. Section 145 (1) of Cr.P.C. therefore mandates recording of satisfaction of

authority about likelihood of causing of breach of peace on dispute of land, before passing of any order under this provision. Perusal of order dated 04/07/2022 does not show any such satisfaction being recorded by the Executive Magistrate. All that is mentioned in the order is that there is report of Police Inspector, Rahuri Police Station in this regard. The provision requires the satisfaction of the authority who is empowered to pass order and not satisfaction of concerned police station. Thus, there is non compliance of the mandatory requirement of recording satisfaction about existence of likelihood of causing of breach of peace concerning with the land in dispute.

6. Admittedly, before passing of order by the Executive Magistrate on 04/07/2022 there existed interim order passed by the civil court in RCS No. 855/2018 i.e. the suit filed by Narayan against the original owners wherein injunction sought from transferring the disputed property in favour of the present petitioner or any other person. By order dated 01/04/2021 injunction came to be passed to that effect. Pertinently the petitioner himself had filed RCS No. 892/2021 and sought injunction against the contesting respondents. The said application for injunction however came to be rejected by the Civil Court on 22/04/2022. It is thus clear that in spite of there being orders in respect of the disputed property by the civil court,

the Executive Magistrate has proceeded further to pass order contrary to the same which is not permissible in law.

7. It is sought to be canvassed on behalf of the petitioner that the petitioner is in possession of the disputed property which was handed over to him by his father Narayan and that only after the death of Narayan the contesting respondents became plaintiffs in RCS No. 855/2018 and therefore the said injunction cannot be treated to have passed in their favour. In this regard it is pertinent to note that the said claim of the applicant of he being put in possession of the disputed property in the year 1997 is not supported by any document on record. On the contrary the alleged affidavit executed by Narayan on 23/03/2007 shows that by virtue of the said document Narayan has sought to relinquish his rights in favour of petitioner. Since the said relinquishment, is not by a registered document, on the basis of same the contention of the petitioner cannot be accepted.

8. Even if case of the petitioner is accepted that his father in the year 1997 had handed over the possession to the petitioner however in that case it does not stand to any reason as to why the suit being RCS NO. 855/2018 was filed by the father of petitioner

against the original owners restraining them from selling the disputed property to any one else including petitioner. The fact of filing of the suit by the father of the petitioner apparently contradicts his case.

9. Be that as it may, since the dispute with regard to the possession of the disputed property is already subjudice before the civil court, it is not open for the Executive Magistrate to record any finding on possession of property. The order passed by the Executive Magistrate therefore suffers error of law as well as facts and hence the same is rightly set aside by the learned Sessions Judge.

10. For the aforestated reasons, this Court finds no justification for causing interference into the impugned order passed by the Sessions Court. As a result of this, petition stands dismissed.

(R. M. JOSHI, J.)

ssp