

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

CRIMINAL WRIT PETITION NO. 478 OF 2021

1. Ananda Rambhau Wakchaure
Age : 65 years, Occu. : Agri.,
2. Shashikant Radhakisan Wakchaure
Age : 45 years, Occu. : Agri.,
3. Annasaheb Radhakisan Wakchaure
Age : 40 years, Occu. : Agri.,
4. Somnath Kondaji Wakchaure
Age : 50 years, Occu. : Agri.,
5. Ramnath Kondaji Wakchaure
Age : 45 years, Occu. : Agri.,
6. Rohidas Ganpat Wakchaure
Age : 55 years, Occu. : Agri.,
7. Bajirao Ganapat Wakchaure
Age : 52 years, Occu. : Agri.,
8. Bhanudas Kundlik Wakchaure
Age : 60 years, Occu. : Agri.,
9. Ramesh Kundlik Wakchaure
Age : 55 years, Occu. : Agri.,
10. Balaji Kundlik Wakchaure
Age : 52 years, Occu. : Agri.,
11. Pandurang Rambhau Wakchaure
Age : 75 years, Occu. : Agri.,
12. Haribhau Rambhau Wakchaure
Age : 60 years, Occu. : Agri.,
13. Sharad Rambhau Wakchaure
Age : 55 years, Occu. : Agri.,

14. Bharat Rambhau Wakchaure
Age : 58 years, Occu. : Agri.,
15. Prakash Sampat Gadakh
Age : 60 years, Occu. : Agri.,
16. Yashodabai Sampat Gadakh
Age : 80 years, Occu. : Agri.,
17. Taramati Harishchandra Ghule
Age : 85 years, Occu. : Agri.,

All R/o. Kalas Khurd, Tq. Akole
Dist. Ahmednagar.

.. Petitioners

Versus

1. The State of Maharashtra
Through the Police Station Officer
Sangamner Police Station, Tq. Sangamner,
Dist. Ahmednagar.
2. Dasharath Govind Pawar
Age : 66 years, Occu. : Retired,
R/o. Flat No. G-1-704, Gangadham,
Phase-II, Bibavewadi Kondhwa Road,
Near Market Yard, Pune-411037.

.. Respondents

Mr. Yuvraj Kakade, Advocate h/f Mr. N. V. Gaware, Advocate for the
Petitioners.

Smt. P. V. Diggikar, APP for Respondent No. 1.

Mr. Mohanish V. Thorat, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 17th March, 2023.

Date on which judgment pronounced : 04th May, 2023.

JUDGMENT :-

. Rule. Rule made returnable forthwith by consent of the parties.

2. This petition is filed by the original accused persons challenging an order dated 14.12.2020 passed by the learned Additional Sessions Judge, Sangamner in Criminal Misc. Application No. 02/2018 thereby issuing process for the offences punishable under Sections 3 (2) (iv) (v) (vii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (hereinafter referred to as "Atrocities Act") and issuing summons for the offence punishable under Section 3 (1) (f) (g) (p) and (q) of the Atrocities Act. The prayer so far as Section 156 (3) of the Code of Criminal Procedure is concerned, the same is rejected. The application is rejected so far as accused Nos. 19 to 26 are concerned. The case was directed to be re-registered as a special case.

3. The facts in short giving rise to the present petition are as below :

The respondent No. 2 lodged a complaint with the allegation that, the land Gat No. 12/1 admeasuring 9.37 Hectares + 0.94 Hectares, total area having 10.31 Hectares was a land given to his ancestors as Mahar Vatandars. The said land was a granted land and therefore, no interest in the land could have been transferred in favour of any person except permission from the Collector. He further alleged that, he came to know that on the basis of Tenancy Case No. 1/66 the ancestors of the accused persons got themselves declared as tenants in

the land and there was judgment given by the Tahsildar to that effect. It is alleged that, on making enquiry the said order and the proceeding filed in the year 1966 itself is not found in the record. The complainant therefore alleged that by showing that judgment the accused persons got entries done in the revenue record. The said entries were challenged by the complainant. The complainant's appeal came to be allowed, against that the learned Divisional Commissioner, Nashik vide its judgment and order dated 31.10.2018 allowed the revision filed by the petitioners. Now, the said order is under challenge before the Hon'ble Minister and it has not attained finality. He further states that, in the proceeding started by the complainant the Tahsildar has clearly held that the judgment on the basis of which the names of the accused and their ancestors are taken on record itself is not found. Against that, appeal was preferred to the Collector. The Collector has also affirmed the finding that in the year 1966 there was no proceeding filed to declare the accused persons and their ancestors as tenants. Said order of the Collector is not challenged by the accused persons.

4. On this complaint, the learned Additional Sessions Judge, Sangamner passed the impugned order holding that there is sufficient ground to proceed against accused Nos. 1 to 18 for the commission of offence as stated above and passed the order. The operative part of

the said order is as below :

ORDER

1. Under Section 204 of the Code of Criminal Procedure issue process against the accused Nos. 1 to 18 for offences punishable under Sections 3 (iv), (v), (vii) & (viii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
 2. Under Sections 3 (f), (g), (p) & (q) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, issue summons to the accused Nos. 1 to 18 to appear before the court on 15.02.2021.
 3. The application stands rejected for direction under section 156 (3) of Cr.P.C. to police to register crime against the accused persons.
 4. Under Section 203 of Cr.P.C., the complaint stands dismissed against accused Nos. 19 to 26 and cognizance of offence against them is refused.
 5. The Superintendent of this Court is directed to re-register of the complaint as a Special Case under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
 6. Accordingly, this application is disposed of with direction to the office to take necessary note in the office register by keeping the copy of this order in the record of Cri. M. A. 2/2008.
5. Main ground in the petition is that the ancestors of the present petitioners – accused are rightly held to be tenants in the land. The respondent/complainant is trying to convert a civil dispute into a criminal case. Till the level of Divisional Commissioner these accused have succeeded in maintaining their right in the land. In the year

1966-1967 itself it was declared that the accused and their ancestors are the tenants in the land. The said judgment had attained finality. In the said proceedings, the persons of Mahar community were party and the judgment was passed only after hearing them. It is also further contended that, some land from Gat No. 12 was acquired for the purpose of Upper Pravara Left Canal as per the award bearing LAQ/SR/24/88 dated 24.11.1990. Towards acquisition compensation was to be paid to the rightful persons. In the said matter also objections were raised. The learned CJSD, Sangamner by way of judgment and order dated 11.02.2000 in Land Reference Application No. 2/1993 held the accused to be entitled to receive the compensation. In the said proceeding father of the present complainant was also a party along with others. The said judgment is not carried further. This shows that the right of the accused persons to hold the land is well established and recognized. The allegation that Tenancy Case No. 1/66 was not filed is not correct as the accused persons/their ancestors had produced those copies before the revenue authorities. In the complaint there is no particulars given of allegation as to when the complainant was ousted from the disputed property. It is thus submitted that, no case is made out attracting Sections of the Atrocities Act and therefore, order issuing process and summons needs to be quashed and set aside.

6. As against this, learned advocate for respondent No. 2 – complainant who has also filed reply has opposed the petition. He submits that, the land was granted as Mahar Vatan. The 7/12 extract of 1929-30 to 1962 shows name of Chima Babu in revenue record. In the year 1962, Vatan and Inam land were resumed and re-granted to the land holders. He further submits that, the names of the ancestors of the accused were shown illegally in revenue record. He submits that, revenue authorities have wrongly shown the accused persons in record. In Tenancy Case No. 3/1991, Tahsildar Akole has clearly observed that the suit land in question is Inam land of Class-6B and is not granted on new tenure to the Vatandars. Therefore, the question of application of provisions of Sections 32 to 32-R of the Bombay Tenancy and Agricultural Lands Act, 1948 does not arise in view of Section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948. It is further observed that, such Inam land cannot be given on tenancy basis. There was no question of proceeding under Section 32 (a) of the Bombay Tenancy and Agricultural Lands Act to declare accused as tenants. Now, the order which is produced by the accused itself is forged. As it is, he submits that, the mutation taken on 19.05.1920 shows that there was a mortgage deed executed wherein, Dharma Manaji and the then owner of the land had given that land by way of mortgage to Chima Babu. Thus, Chima Babu was in possession in the

capacity of mortgagee and he could not have created the tenancy rights in the said land. He submits that, therefore, it is a clear case falling under the Atrocities Act and the learned Court below has rightly passed the order.

7. The learned A.P.P. supports the order passed by the learned Additional Sessions Judge submitting that the Court has rightly passed an order by giving cogent reasons.

8. Learned advocate for the petitioners relied upon the judgment of the Hon'ble Apex Court in the case of **B. Venkateswaran & Ors. Vs. P. Bakthavatchalam** reported in **2022 LiveLaw (SC) 14**. The Hon'ble Apex Court in its judgment has held that, when the dispute is in nature of private civil dispute between the parties the provisions of the Atrocities Act will not get attracted and filing a complaint under the Atrocities Act would be an abuse of process of law. In that case, it was a dispute in respect of illegal construction that was started by the accused persons and the complaint was filed that the accused have encroached upon pathway by putting illegal construction on the water pipeline, sewage pipeline and EB cable. It was held that the civil dispute is converted in criminal dispute and the complaint was quashed.

9. Learned advocate for respondent No. 2 relied upon the judgment of the Hon'ble Apex Court in the case of **Ramdev Food Product Pvt. Ltd. Vs. State of Gujarat** reported in **2015 AIR SCW 2058**. He relied upon paragraph No. 30 of the said judgment. In the said case, the learned J.M.F.C. had directed the police to carry out investigation by passing an order under Section 156 (3) of the Cr.P.C. Direction issued under Section 156 (3) of the Cr.P.C. was challenged in the High Court. The High Court had declined to interfere with the order passed by the learned Magistrate. Therefore, the accused had approached the Hon'ble Apex Court. The Hon'ble Apex Court considered the question as to whether the learned Magistrate ought to have proceeded under Section 156 (3) instead of Section 202. It is observed that, while passing the order the learned Magistrate had given reasons and those have been upheld by the High Court. It is further held that, when the transaction giving rise to cause of action for a civil action may also involve a crime in which case resort to criminal proceeding may be justified. By observing that there is judicially acknowledged tendency in the commercial world to give colour of a criminal case to a purely commercial transaction. Ultimately, the appeal was dismissed.

10. Considering all the submissions and the judgments cited in the facts of the case, this Court finds the following things.

11. It is on record that, proceeding had taken place in the year 1966 by way of proceeding bearing Tenancy Case No. 1/66 wherein, some of the persons from Wakchaure family were declared to be tenants. In the said proceeding, one of the persons that is Dasharath Govind Pawar, owner of the land was also a party. Though the complainant states that this proceeding was never filed or nothing is found on record still the fact remains that the said order is referred to in the proceeding before the revenue authorities thereafter. In the year 1993, LAR was filed bearing Land Reference Application No. 2/1993. The Civil Court had recognized the rights of the objectors of Wakchaure family holding that they are entitled to receive the compensation of the land by judgment and order dated 11.02.2000 passed by the learned Civil Judge, Senior Division, Sangamner. In this proceeding, Narayan Maruti Pawar and Govind Chima Pawar that is father of present respondent No. 2 – complainant was also a party. The said order is not challenged.

12. It is as on today, all the authorities are in favour of the petitioners-accused and the matter is now subjudice before the Minister only in respect of revenue entries. The Divisional Commissioner, Nashik has in clear terms held in his judgment in RTS/Revision/731/2018 that, the respondent No. 2, one Dadabhau Dhondiba Pawar and Ananda Narayan Pawar are not entitled to have

their names entered into revenue record. In the said judgment, the judgment in the matter Tenancy Case No. 1/66 is accepted. The learned Additional Sessions Judge, however, has observed that Tenancy Case No. 1/66 is not found in record and therefore this is a case falling under the Atrocities Act. Looking at this, it also needs to be considered that the proceeding of the civil suit that is R.C.S. No. 206/2014. In the said suit on Exh. 5 application, the learned 4th joint Civil Judge Senior Division, Sangamner has allowed the application and restrained defendant Nos. 3 to 38 therein from disturbing the possession of present petitioners wherein, the present respondent No. 2 – complainant is a party defendant No. 30. His brothers are also party to the said suit. Thus, prima facie, the possession of the petitioners is held to be on the suit land. In the complaint filed by the respondent No. 2 it is nowhere specifically pleaded as to when he is dispossessed from the land. The allegation is that, false record is created in respect of Tenancy Case No. 1/66 when the Atrocities Act was not even enacted.

13. The respondent No. 2 has also placed on record two more proceedings i.e. Tenancy Case No. 3/91 filed by Yashodabai Sampatrao Gadakh and others Vs. Narayan Maruti Pawar and others wherein, father of respondent No. 2 was also a party. The Tahsildar by order dated 21.10.1993 dismissed the application wherein, the applicants

had prayed for reliefs under Section 32 (g) of the BT and AL Act. A tenancy appeal came to be filed before the SDO challenging the judgment in Tenancy Case No. 3/91 bearing Tenancy Appeal No. 13/94. Brother of respondent No. 2 was made as a party. The same appeal also came to be rejected.

14. There was also a suit filed by Anandrao Rambhau Wakchaure and others Vs. The State of Maharashtra and others wherein, the present respondent No. 2 was also a party defendant No. 30. The said suit was for restraining defendant Nos. 3 to 38 from entering into the suit land. Against which, Misc. Civil Appeal No. 44/2019 was filed by present respondent No. 2. The respondent No. 2 had even made representation to the Collector, Ahmednagar dated 28.12.2015 praying for taking action under the Atrocities Act and action under the Bombay Hereditary Offices Act, 1974.

15. Coming to the impugned order, the learned Additional Sessions Judge has issued process against the accused for the offence punishable under Section 3 (2) (iv) (v) (vii) of the Atrocities Act and has further issued summons for the offences punishable under Section 3 (1) (f) (g) (p) and (q) of the Atrocities Act. Thus, looking to the complaint and order it needs to be considered as to whether any of the offences is made out for which the process and summons is issued.

16. Section 3 (2) (iv) (v) (vii) of the Atrocities Act is reproduced here as under :

“3. Punishments for offences of atrocities.—

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(i)

(ii)

(iii)

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;

(vi)

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

17. Section 3 (1) (f) (g) (p) and (q) of the Atrocities Act is reproduced here as under :

“3. Punishments for offences of atrocities.—

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(a)

(b)

.....

- (f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;
- (g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.
- (p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;
- (q) gives any false or frivolous information to any public servant any thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

18. Section 3 (2) (iv) is about committing mischief by fire or any explosive substance intending to cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe. None of the cases are made out against the petitioners under Section 3 (2) (iv) (v) (vii) and Section 3 (1) (f) (g) (p) and (q) of the Atrocities Act. As Section 3 (f) of the Atrocities Act is concerned, the dispute is going on in the Court. Looking at the revenue record consistently from the year 1967 and even prior to that period the possession is shown of the members from Wakchoure family. So it cannot be said that the petitioners are wrongfully occupying or wrongfully cultivating the land owned by or in

the possession of or allotted to a member of the Scheduled Caste or a Scheduled Tribe. The allotment as vatan land in the year 1879 cannot be seen for the purpose of this act unless this wrongful occupation, assuming any, is shown after Atrocities Act came into force. The complainant has also not given any specific date as to on which date he was wrongly dispossessed from the land or premises as given under Section 3 (g) is concerned.

19. As far as Section 3 (p) is concerned, the allegations though are made that the false and malicious proceedings are filed, in the facts of the case this Court finds that, the institution of the suit that is R.C.S. No. 206/2014 can in no way be said to be false or malicious. So far as Section 3 (q) is concerned, there is no case of giving any false or frivolous information to any public servant causing such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe.

20. Thus, it is seen from the record that, the respondent No. 2 and his father were aware of all these proceedings at least from 1993. Even if accepted that, proceeding of the year 1966 was behind their back, but in every proceeding they were aware at least since 1991 as his father was a party to various proceeding. It is clear that, only after losing before other authorities now a complaint is filed for the first time

under the Atrocities Act. This is clearly an attempt to convert a civil dispute between the parties into a criminal complaint. This complaint is filed for the first time in 2018. Now only as a last resort after losing in the Civil Court and before the revenue authorities, a criminal complaint is filed.

21. In the Civil Court, the petitioners-accused have shown their right from 1959 as tenant. At the cost of repetition, again it needs to be mentioned here that the case of the respondent No. 2 is not that he is dispossessed. He has not even made that averment that on a particular date he lost possession of the land. On the contrary, the averment in the complaint shows that the complainant was staying far from his native place at Mumbai. This can be considered only to the extent of respondent No. 2. There is no case that any of the relatives also was not staying at the native place. Even his claim to be owner of the land is on the strength of the documents in 1920 and prior to that. It is seen from the documents that, in fact, father of respondent No. 2 that is Govind Pawar was very much a party to the proceedings right from Tenancy Case No. 1/66 and also to the Land Reference Application No. 2/1993. There is no case that father of the complainant had no idea of these cases. In a civil suit filed in the year 2014 there is also an interim order passed against defendants restraining them from interfering in

possession of the plaintiffs over suit land. This respondent as observed earlier is also a party to the suit. In spite of knowledge no immediate complaint was filed. When parties are litigating before different forum for quite long period and in the facts of this case it cannot be said to be false, malicious or vexatious suit or other proceeding. No case of wrongful dispossession is made out. It is also not shown that petitioners are wrongfully occupying or cultivating the land.

22. The learned Sessions Judge has not considered as to whether really the allegations are substantiated and whether ingredients are made out in the complaint. The complainant has not given any date of dispossession from the land. Before issuing process the Court has to see as to whether the facts taken as it is make out any offence. There was one more reason to strictly see the ingredients are made out as in this case the complaint is filed after the respondent No. 2 lost in other proceeding. Though he had knowledge that he is not in possession, still he has not made any complaint immediately. The learned Sessions Court has not ascertained from looking to the ingredients of the offences alleged against the petitioners and has passed the order. The order thus suffers from non application of mind and deserves to be quashed and set aside.

23. The learned Special Court has rightly refused to issue process against respondent Nos. 19 to 26 being public servants and for the reason that no sanction is obtained to prosecute them, as it is there is no challenge to that part of the order.

24. On considering all the aspects in this case this Court finds that, no case is made out to issue process under Section 3 (2) (iv) (v) (vii) of the Atrocities Act and to issue summons under Section 3 (1) (f) (g) (p) (q) of the Atrocities Act. This Court finds that, the order passed by the learned Additional Sessions Judge, Sangamner dated 14.12.2020 in Criminal Misc. Application No. 2/2018 deserves to be quashed and set aside by allowing the writ petition.

25. It needs to be noted that the learned Trial Judge in the operative order had used two different terms. In clause No. (1) of the order he has issued process for the offence punishable under Section 3 (iv) (v) (vii) (viii) of the Atrocities Act. **In fact, it should have been Section 3 (2) (iv) (v) (vii) of the Atrocities Act.** Though there is no sub section (viii) he has mentioned it and he has not mentioned as sub section (2). Secondly, in clause No. (2) it has typed as issue summons to the accused Nos. 1 to 18 for the offences punishable under Section 3 (f) (g) (p) & (q) which should have been **Section 3 (1) (f) (g) (p) & (q) of the Atrocities Act.** The learned Judge could have used one term only for all

the sections either issue process or issue summons.

26. The criminal writ petition is allowed. Rule is made absolute in terms of prayer clauses (B) and (C).

(KISHORE C. SANT, J.)

PS.B.