

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO. 335 OF 2022**

Ramchandra Nivrutti Gaisamudre ... Appellant
[Ori. Complainant]

Versus

The State of Maharashtra and others ... Respondents

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Mr. Kishor R. Doke, Advocate for appellant

Mr. A. M. Phule, APP for respondent No.1 - State

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**CORAM : SMT VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 17.03.2023.

ORDER (PER Y. G. KHOBRAGADE, J.) :-

Present appeal under Section 14-A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, has been filed by the appellant/complainant challenging the order dated 30.01.2020, passed by the learned Additional Sessions Judge-4, Beed in Criminal Miscellaneous Application No.109/2018 whereby his complaint came to be dismissed.

2. The appellant/complainant is a retired Government employee. He has alleged that, he had purchased a plot admeasuring 2400 square feet from his father Nivrutti Rauji Gaisumadre under the registered sale-deed on 27.01.1998. It was mutated in his name with the Municipal Council, Beed. He has

constructed a house thereon after availing loan facility from State Bank of India, Main Branch, Jalna Road, Beed. However, he could not repay the loan amount. Therefore, his borrower had obtained an order from the Executive Magistrate under the provisions of Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and possession of said plot was taken after drawing panchanama. Though the respondent Nos. 2 to 14 are not concerned in respect of his property, but Shri Raghunath Rangnath Tope executed sale-deed dated 21.09.1999 in favour of respondent No.2 – Ujwala W/o Arun Maskar on the basis of false and fabricated documents. It is alleged that the sale-deed to the extent of 4½ Guntha out of Survey No.106(A) was brought into existence in fraudulent manner in order to defraud him and to grab his property. The respondent No.2 i.e. accused No.1 had filed Regular Civil Suit No.59/2005 against him on the basis of false, frivolous pleadings, but said suit came to be dismissed on 08.10.2013, wherein the learned Civil Judge, Junior Division, Beed, observed that the appellant/complainant is having right and interest over the property and he is in exclusive possession. During the pendency of said suit, entire structure of his house was demolished by accused No.1/respondent No.2 and his articles were stolen. Therefore, he

lodged the F.I.R. against the respondent No.2 /accused No.1 and trial of said crime is pending.

3. It is further contended that the respondent No.2/accused No.1 had filed Appeal No.49/2001 challenging the judgment and decree dated 08.10.2013 passed in Regular Civil Suit No.59/2015, however, said appeal came to be dismissed on 20.01.2015. Proceeding on behalf of respondent Nos. 2 and 3/accused Nos. 1 and 2 was initiated before the learned Debt Recovery Tribunal against the order of attachment of property passed by the learned District Collector/District Magistrate, but the said appeal was withdrawn by them. Therefore, the complainant says that he has legal right, title and interest in the suit property. In spite of this factual situation, the respondent Nos. 2 and 3/accused Nos. 1 and 2 had entered into criminal conspiracy and in collusion with Talathi, got the name of complainant deleted. His name has been deleted from 7/12 extract because of he belongs to 'Mahar' caste, which is scheduled caste and the accused are belonging to other caste than scheduled caste. Accused have threatened to kill him with an intention to grab his property.

4. Learned Special Court under the Atrocities Act, passed the impugned order on 30.01.2020 and dismissed the complaint of the appellant / complainant, hence, present appeal.

5. The learned Counsel appearing for the appellant vehemently canvassed that though the learned District Magistrate passed an order dated 17.12.2016 under the provisions of SARFAESI Act and symbolically took possession of appellant's plot, the complainant/appellant remained in possession of the suit plot and as per the sale-deed, 7/12 extract, mutation entries, he is the owner. Learned trial Court failed to consider the fact that the respondent Nos.2 and 3 are in collusion with officers of the Municipal Council, Beed, and got prepared the property card (PTR) in their name. It has been wrongly held by the learned Trial Judge that the allegations in the complaint are of civil nature and there is no need to make further investigation under Section 156(3) of the Code of Criminal Procedure. Therefore, the impugned order passed by the learned trial Court is illegal, bad in law and prayed to quash and set aside the same.

6. On bare perusal of the averments made in the complaint, it prima-facie appears that the appellant/complainant had purchased a plot admeasuring 80 x 30 i.e. 2400 sq.ft, out of

Survey No. 106-A from in question, on 27.01.1998 under the registered sale-deed No.151/1998. Thereafter, vide entry No.10612 dated 21.04.2011, mutation entry was effected in revenue record of the Circle Office. It is not in dispute that, the appellant/complainant had obtained loan facility from State Bank of India, Main Branch, Jalna Road, Beed, for construction of house by mortgaging the said property. Appellant/complainant failed to repay the loan. Therefore, the banker of the complainant filed an application under the provisions of SARFAESI Act before the District Magistrate, Beed. The financial institution took possession of the plot in question after the order passed by the learned District Magistrate on 17.12.2016.

7. No doubt, even after taking physical possession of the plot in question by the State Bank of India, ownership and possession of plot was shown in the name of appellant/complainant in the property card. It is well settled principle of law that mere mutation entry in the name of a person will not confer ownership right because the possession of plot in question taken by the financial institution under the SARFAESI Act. Complainant has not challenged those proceedings under the SARFAESI Act.

8. No doubt, the respondent No.2/accused No.1 Ujwala had instituted Regular Civil Suit No.59/2005 and had prayed injunction restraining the defendants therein from obstructing her possession over the suit property on the ground that she purchased the said property from one Raghunath Rangnath Tope under the registered sale-deed No.185/1999 dated 21.01.1999, but said suit was dismissed on merit on 08.10.2013. Being aggrieved by the said judgment and decree, the respondent No.2/accused No.1 instituted appeal bearing R.C.A.No.49/2014 before the learned District Judge, but on 20.01.2015, said appeal dismissed. Whether these proceedings would have conferred ownership rights over the complainant is a question, as his ownership rights were taken away by a competent forum. Dismissal of suit of injunction will not confer ownership title on anybody. It would relate only to possession. Further, when a competent forum had taken possession by adopting a due procedure, then question arises how still the complainant can be said to be in possession of the disputed property.

9. After institution of the present complaint, the learned trial Court directed the SDPO, Beed to submit inquiry report under Section 202 of Code of Criminal Procedure, in regard to the complaint lodged by the appellant. Accordingly, the SDPO

conducted inquiry and submitted its report on 04.10.2019. On perusal of said report it reveals that as per sale deed 568/1992 Shri Nivrutti Raoji Gaisamudre and Raghunath Rangnath Tope were the joint owners of 10 Guntha land. Though the appellant complainant alleged about execution of false and bogus sale deeds No.185/1999 and 5927/2013, but both sale deeds are registered with the Sub-Registrar and they are duly certified. Further during inquiry, it found that on 09.01.2013, the respondent No.2 Sau Ujwala Arun Maskar submitted an application for mutation entry before the Talathi and notice was published in newspaper on 11.01.2013, but objections were not received, hence said mutation entry No.2065 was effected in PTR in the name of respondent No.2 and it is pure civil dispute,

10. On face of record, it appears that in the year 2010 the appellant obtained loan of Rs.20,00,000/- (Rupees Twenty Lakh) from the S.B.I. by mortgage of plot in question, but he failed to repay said loan amount, which was resulted NPA. Therefore, the S.B.I. initiated a proceeding under the SARFAESI Act. Ultimately, on 17.12.2016 the learned District Magistrate/District Collector, Beed, passed an order holding that on failure of repayment of loan by the present appellant, he should deliver possession of mortgage plot to the S.B.I. Permission was also granted to put the

plot for auction and to recover loan amount and excess amount of loan be paid to the appellant. Accordingly, on 19.07.2017, the S.B.I. taken possession of plot in question and also put notice-board showing its possession over the plot. Now, complainant alleges that since he belongs to Scheduled Caste, the accused Nos. 1 to 6 in order to grab plot in question by illegal means, have created false and bogus documents and mutated their name in the revenue record. Therefore, the nature of complaint is of civil nature and bald statement is made by the complainant that since he belongs to Scheduled Caste, the respondent Nos. 2 and 3 have prepared false and bogus documents to deprive him from his property right. There are no specific averments as to how respondents were knowing his caste. All the accused appeared to have adopted legal procedure. There appears to be no intention on their part to deprive the complainant from his property.

11. Therefore, considering the allegations made in the complaint it can be said that they do not constitute ingredients of any offences under the Indian Penal Code as well as, as per the provisions the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

12. Learned Judge of the Special Court has passed the impugned order on 30.01.2020 and dismissed the complaint after considering the averments made in the complaint as well as the report dated 04.10.2019 submitted by the S.D.P.O., Beed, which is itself justifiable and no substantial ground is set out to interfere with the findings recorded by the trial Court.

13. In view of the above discussions, the present appeal is liable to be dismissed and the same is hereby dismissed.

[Y. G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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