

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8280 OF 2023

Bandu Sayaji Khabale Patil and Ors.

... Petitioners

Versus

Vikram Gajanan Patil and Anr.

... Respondents

— —
Mr. Nikhil N. Pawar for the Petitioners.

Mr. Umesh H. Pawar, for Respondent No.1.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : July 24, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 27th June, 2023 allowing police protection to the respondent-plaintiff for two days for preparing and sowing of land under Section 151 of the Code of Civil Procedure, 1908.

3. It appears from the material available on record that the plaintiff has purchased 87 R land from defendant no.21 *vide* registered sale deed and claims to be in possession of the said land. The defendant Nos.1 to 20-petitioners herein had previously preferred RCS No.1 of 2022 seeking order of perpetual injunction. In

the said suit viz. RCS No.1 of 2022, the interim application for temporary injunction was rejected by the trial Court with *prima facie*, finding that the respondent no.1 herein, who was the defendant in the said suit, was in possession of the suit land. As against which, the Misc. Appeal preferred by the defendant nos.1 to 20 came to be rejected.

4. RCS No.77 of 2023 instituted by the present respondent No.1 seeking perpetual injunction restraining the defendant nos.1 to 20 from obstructing the peaceful possession of the plaintiff over the suit land. Vide order dated 25th May, 2023 the trial Court granted order of temporary injunction. On 29th May, 2023, cross-FIRs were registered by the plaintiff and defendant nos.1 to 20 against each other. FIR No.99 of 2023 was lodged by the defendant Nos.1 to 20 and FIR No.100 of 2023 was lodged by plaintiff. The allegation of the plaintiff was that after passing of the impugned order of temporary injunction, the defendant nos.1 to 20 obstructed the work of cultivation of the land and threatened the plaintiff.

5. It appears that on 6th September, 2022 i.e. prior to the filing of the RCS No. 77 of 2023, FIR No.229 of 2022 was lodged by the plaintiff against the defendant nos.1 to 20 in which chargesheet has been filed in SCC No.11 of 2022 and the said case is pending.

6. On 4th June, 2023, an application came to be filed by the plaintiff seeking police protection to implement the order of temporary injunction. The application placed on record the obstruction caused on 29th May, 2023 and also the fact of lodging of the cross-FIRs. The defendant nos.1 to 20 opposed the application contending that the recourse can be had to the provisions of Order 39 Rule 2-A or that the order of the temporary injunction can be put to execution.

7. Heard Mr. Nikhil N. Pawar, learned counsel for the Petitioners and Mr. Umesh H. Pawar, learned counsel for Respondent No.1.

8. Learned counsel appearing for the Petitioner submits that the grant of police protection is an extreme step and is not required to be granted in a mechanical manner. He would submit that it is open for the plaintiff to execute the order of interim injunction and in case of any allegation of disobedience the provisions of Order 39 Rule 2A of CPC can be invoked. He would further submit that the order in question is vague inasmuch as it grants of police protection for two days without specifying the days on which police protection is granted. In support of his submissions he relies upon the decision of the High Court of Andhra Pradesh in the case of ***Polavarapu***

Nagamani and others vs. Parchuri Koteshwara Rao and others, reported in **2009 SCC OnLine AP 754**. He would further submit that the High Court of Andhra Pradesh in the said decision has held that in case of disobedience of the injunction order the remedy is an application under Order 39 Rule 2A and an application under Order 21 Rule 32 which is also not barred. He would urge that application for police protection has been filed only for the purpose of collection of evidence.

9. *Per contra*, learned counsel appearing for the respondent No.2 submits that in the previous proceedings filed by the defendant nos.1 to 20 the possession of the plaintiff has been *prima facie*, observed. He would further submit that considering the FIRs which have been lodged against the defendant nos.1 to 20, this is a fit case where the order of police protection is granted. He relies upon the following decisions :

- (a) Hemant Vasant Jagtap and Another vs. Haji Abdul Malik Haji Yunusisa and others [(2023) 3 Mah.L.J. 550];
- (b) Ramesh s/o Yashwant Khedkar and others vs. Anil s/o. Sitaram Khedkar, [2021 (3) Mh.L.J. 48];
- (c) Nirabai J. Patil vs. Narayan D. Patil [2004 (1) Mh.L.J.1058];

10. Considered the submissions.

11. The undisputed position is that in the earlier round of litigation between the parties the plaintiff has been *prima facie*, held to be in possession of the suit property and as such, the application for injunction filed by the Petitioner herein came to be dismissed. Similarly, in the present proceedings there is an order of the trial Court restraining the Petitioners from interfering with the possession of the plaintiff. It appears that in spite of the order of temporary injunction, the defendant nos.1 to 20 are obstructing the plaintiff's possession. Upon a query by this Court as to whether statement can be made that they will not obstruct the possession of the plaintiff, learned counsel for the Petitioners is unable to make such a statement. It appears that the Petitioners who have suffered an order of injunction do not intend to adhere to the restraining order which has been passed. This position is further substantiated by the FIRs which have been lodged by the plaintiff which would indicate that every attempt is being made to obstruct the plaintiff's possession which *prima facie*, finding of possession have been affirmed in two rounds of litigation. That being so, the objection that the order on application for police protection is passed in a mechanical manner cannot be accepted. Considering the lodging of FIRs, it appears that

the plaintiff's possession has been continuously being obstructed by the Petitioners and as such, in my opinion, the application for appointment of police protection cannot be faulted with. Reliance placed by the learned counsel for the Respondents on the decisions of this Court is squarely applicable in the facts of the case.

12. As regards the decision in the case of ***Polavarapu Nagamani*** (supra), relied upon by the learned counsel for the Petitioners, in that case the Andhra Pradesh High Court was considering a question as regards the power of Civil Court to direct the police to safeguard the subject property in the suit pending adjudication. In that case the interim relief was granted that the plaintiffs therein shall not prevent the defendant from carrying out agricultural operations in the land. The defendants filed an application seeking police protection to maintain possession and cultivation in respect of the property of which they are in possession and in the facts of that case, the Andhra Pradesh High Court considered the provisions of Order 39 Rule 2-A and Order 21 Rule 32 (1) of the CPC and has held that in case of a complaint that the injunction order has been disobeyed, the remedy is to file an application under the aforesaid two provisions and that the remedy is not to grant police protection. However, the Andhra Pradesh High

Court further held that the complaints of the opposite party can be twofold. Firstly, it may be complained that there are attempts by the opposite party to contravene and disobey the order of injunction or alleging threat of violation of injunction and in a second situation, there may be a positive act contrary to the order of injunction order and/or causing legal injury ignoring the Court's order. The Court held in the first situation, the Court has a power to direct the police to prevent such violation and disobedience by providing necessary protection to enforce the order of injunction. In the facts of the present case it can be seen that there are attempts by the opposite parties to contravene and disobey of the order of injunction and as such, the proposition of law rendered by the Andhra Pradesh High Court that in such a situation the Court has the power to direct police protection to prevent such violation and disobedience applies to the facts of the present case.

13. The trial Court in the present matter was convinced of existence of grave emergency in view of the cross FIRs which have been lodged and has thus granted police protection. The trial Court while considering the application have considered that although the order has been challenged in the appeal the same has not been set aside and has also noted the conduct of the Petitioners inasmuch as

they alleged that the order is passed without considering their plea. It appears that before the Trial Court, the allegations are made against the Court, which has been observed in paragraph 8 of the order which is at page 81 of the petition.

14. Considering the conduct of the Petitioners as also continuous attempt to breach the order passed by the trial Court, in my opinion, there is no infirmity in the impugned order dated 27th June, 2022. Writ petition being devoid of merits stands dismissed.

15. Needless to clarify that the appeal which is pending against the order passed below Exh.5 is to be decided on its own merits and uninfluenced by the observations made herein above.

(Sharmila U. Deshmukh, J.)