



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 552 OF 2023

PETITIONER:

1. Kamran Ishtiyak Ahmed Khan
S/o. Ishtiyak Ahmed Khan,
Aged 37 years, Occ. Business,
R/o. Plot No.41, Bhandara Road,
Mangal Deep Society, Pardi Naka,
Near Water Tank, Bhandewadi,
Nagpur, Maharashtra-440008.
2. Nayab Siraj Khan S/o Siraj Khan,
Aged 51 years, Occ. Business,
R/o. Plot No.54, Mangal Deep Society,
Bhandara Road, Netaji Nagar,
Nagpur, Maharashtra-440008.

V E R S U S

RESPONDENTS :

1. The State of Maharashtra,
Through Police Station Incharge,
Kalamna Police Station,
Tahsil and District : Nagpur.
2. The Police Commissioner of Police,
CBI Colony, Sadar, Nagpur,
Maharashtra-440001.

Mr. P.A. Nemade, Advocate for petitioner.

Mr. S.S. Doifode, Additional Public Prosecutor for respondents.

**CORAM:- NITIN W. SAMBRE AND
VALMIKI SA MENEZES, JJ.**

DATE :- 27/09/2023.

JUDGMENT : (Per Valmiki Sa Menezes, J.)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. By this petition under Article 226 of the Constitution of India the petitioners seek to quash and set aside the impugned order dated 22.02.2023 passed by the Senior Police Inspector, Police Station, Kalamna, Nagpur City passed under Section 149 of the Code of Criminal Procedure Code, 1973 (hereinafter referred to as “the Code”). The impugned order purports to restrain the petitioners from commencing construction of a Mosk/Madarsa in a plot bearing No.57/1 under Khasra No.21/1 of City Survey No.32, Mouza Pardi.

3. It is the petitioner’s contention that under powers conferred on a Police Officer under Section 149 of the Code, he may at most interpose himself between the petitioners and any third person in order to prevent, commission of a cognizable offence by any of the parties, but however, a Police Officer would not be vested with the powers of issuing an order of injunction or restraint upon a party under these provisions.

4. The impugned order has been supported by the State, who has filed affidavit-in-reply dated 31.8.2023 by an Officer of the concerned Police Station, contending that the petitioners had constructed a tin-shed around Plot No.57/1 and were in the process of commencing construction of a structure to be used for prayer, which was objected to by the residents of the locality,

giving rise to possibility of breach of peace and public tranquility in the area. The affidavit further contends that the petitioners have not yet obtained any licenses or permissions from the concerned authorities including Nagpur Improvement Trust for sanctioning this construction, and as such, there could be likelihood a law and order situation between two communities if a Masjid/Darga/Madarsa is allowed to be constructed on the plot.

5. We have heard the learned counsel for the parties, perused the record of the petition, and the impugned order.

6. Perusal of the impugned order which discloses that the Officer concerned has practically directed the petitioners to stop all construction on the concerned plot and has restrained the petitioners from erecting any Masjid/Madarsa or any structure for industrial use thereon.

A perusal of the provision of Section 149 of the Code would show that the police is expected to interpose between parties only for preventing commission of a cognizable offence and to take any steps in that regard. The powers vested under Section 149 of the Code do not permit issuance of any order or restraint or injunction on a party.

7. In this regard, reliance was placed by the petitioner on the judgment of this Court dated 27.07.2022 in *M/s. Rai Udog*

Limited Vs. State, passed in Criminal **Writ Petition No.622/2021** wherein the provision of Section 149 of the Code were examined and an order similar to the one passed in the present matter was dealt with in the following terms :-

*“10] A perusal of the above quoted provision, would show that a Police Officer is expected to interpose only for the purpose of preventing commission of a cognizable offence and that he can take appropriate steps in that regard. The question is, whether the Police Officer, while exercising power under Section 149 of the Cr.P.C., can issue a restraintment order or an order akin to an injunction against a party. Reliance in this regard is placed on behalf of the petitioner on judgment and order dated 27.03.2015, passed by a Division Bench of this Court in the case of **Shashikant Bhurya Kokani Vs. The State of Maharashtra & Ors.** reported in **2015(2) BomCR (Cri) 701**. While considering the scope of the aforementioned provision, in the said judgment, it was held as follows:*

"11. Section 149 of Criminal Procedure Code empowers every police officer to interpose for the purpose of preventing and, to the best of his ability, prevent the commission of any cognizable offence. Otherwise also, according to us, section 149 Cr.PCode does not vest police officer in the exercise of jurisdiction under Section 149 Cr.P.C. to issue blanket order of injunction prohibiting any party from entering into the agricultural land. In our considered opinion, Respondent No.3 would not have issued impugned notice injecting the

petitioner, more so when the appeals are pending adjudication. We are of the opinion that impugned notice (Annexure-F) issued by Respondent No.3 is unsustainable in law."

11] We are of the opinion that even if there was apprehension of a law and order situation being created at the spot in question, while exercising power under Section 149 of the Cr.C.P., the Police Officer (respondent No.1 herein) did not have the power or authority to issue a virtual injunction order against the petitioner - Company, which was undertaking construction on a piece of land. If any party sought to raise a dispute as regards the authority of the petitioner - Company to proceed with construction on the said piece of land, such a party would obviously have to knock the doors of the competent Civil Court to obtain urgent order of injunction. In fact, as noted above, the individuals who sought to intervene in the present petition, had filed Writ Petition No.2027/2022, before this Court and they had themselves proposed to file a civil suit for enforcement of the alleged easementary rights, in the backdrop of which, the writ petition stood disposed of.

12] It is significant that in Section 149 of the Cr.P.C., quoted above, the word "interpose" is used, in the context of a Police Officer preventing commission of any cognizable offence. In Cambridge Dictionary, interpose is defined by stating "to put something between two things". In Collins Dictionary, interpose means "to intervene or step in". As per Marriam-Webster Dictionary, interpose means "to be or come between" and in Oxford Learner's Dictionary, interpose means "to place somebody or something between two people or things".

13] Applying the aforesaid meanings given to the word "interpose", in Section 149 of the Cr.P.C., a Police Officer is required to come between people or things to prevent commission of any cognizable offence. In the present case, even if the Police Officer apprehended commission of a cognizable offence, he was required to come in between persons and while doing so, ensuring that lawful activity was assisted and unlawful activities were prevented. The petitioner - Company carrying out development activity/construction lawfully could not have been restrained merely because some people gathered with the threat of committing cognizable offence. On the contrary, the Police Officer was expected to take appropriate steps by interposing and ensuring that lawlessness and unlawful activity was prevented. Those claiming any right to restrain the petitioner - Company from carrying out its development/construction activity ought to approach the competent Civil Court for obtaining appropriate orders of restraint, in accordance with law. Instead, the respondent No.1 - Police Officer in the present case asked the petitioner - Company to do so."

8. Applying the ratio laid down in the above judgment to the facts of the present case, there is clear overreach demonstrated in the passing of the impugned order, which virtually restrains the petitioners from dealing with their own property and carrying out any construction thereupon; the order operates as an injunction upon the petitioners, which is impermissible under the said provisions. Consequently, we hold that the impugned order dated 22.02.2023 is in excess of the powers vested in the authority

under Section 149 of the Code and accordingly quash and set aside the same.

9. We, however, note that the petitioners themselves have stated at paragraph Nos.2 and 3 in the Petition that they have applied to the concerned authorities, including the NIT for construction license an approval of the development plan for erecting a single unit residential dwelling on the said plot. The detailed architectural plan is annexed as Annexure '8' of the Petition. It is averred in the petition that the construction has not been sanctioned as yet. When we brought these circumstances to the notice of the petitioners, the petitioners undertook before us that they would not proceed to erect any construction or building on the concerned plot without the requisite approvals/permissions/licenses from the NIT and other concerned authorities. We have accepted this statement made by the petitioners through their learned Advocate as an undertaking to this Court.

10. For reasons stated above, we quash and set aside the impugned order dated 22.02.2023 and make Rule absolute in terms of prayer clause (1) of the Petition. No costs.

[VALMIKI SA MENEZES, J.]

[NITIN W. SAMBRE, J.]