

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL WRIT PETITION NO. 289 OF 2023

Shri Omprakash Shobharam Gawhane

Vs.

State of Maharashtra, Thru. PSO, PS Ramtek, Nagpur and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.C. Khare, Advocate for petitioner.

Mr. N.R. Rode, APP for respondent Nos.1, 4 to 7.

**CORAM : VINAY JOSHI, AND
BHARAT P. DESHPANDE, JJ.**

DATE : 20.04.2023.

Heard.

2. This petition under Articles 226 & 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, is seeking for quashing of the charge-sheet arising out of the FIR No.296/2022, registered with Police Station Ramtek, District-Nagpur, for the offences punishable under Sections 181, 182, 193, 424, 431, 489 of the Indian Penal Code read with Section 3 of the Public Property Act.

3. It is petitioner's case that respondent Nos.2 and 3, are neighbouring residents, who owns adjacent property. According to petitioner, respondent Nos.2 and 3 made an encroachment on the petitioner's property bearing Survey No.1833, for which a civil suit was filed. The First Appellate Court granted a decree in favour of petitioner for removal of encroachment and handing over the possession. The said decree was confirmed up to Supreme Court.

4. Later on, respondent Nos.2 and 3 have filed a civil suit for nullifying the effect of decree, however, the plaint was rejected in terms of Order 7 Rule 11 of the Code of Civil Procedure. The said order was confirmed in First Appeal. Facing failure, respondent Nos.2 and 3 have filed one another suit on the similar ground with the sole intention to defeat the decree which was obtained by the petitioner. No sooner said suit was filed existing FIR has been lodged raising a similar grievance about landed dispute which has attained finality up to Supreme Court.

5. In support of said contention, petitioner has produced the copies of all the judgments up to

Supreme Court. Moreover, we have been taken through the sections invoked in the FIR to contend that they does not apply at all. Prima facie, we find substance in the contention raised by the petitioner. We find that an exceptional case is made out to stay the proceeding pending in trial Court arising out of said FIR.

6. Issue notice to the respondent Nos.1 to 3, returnable on **08.06.2023**.

7. Mr. Rode, learned APP waives service of notice on behalf of respondents/State.

8. In the meantime, the proceeding of RCC No.97/2022, pending on the file of Judicial Magistrate First Class, Ramtek, District-Nagpur, stand stayed till further orders.

JUDGE

JUDGE