

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.312 OF 2023
WITH
INTERIM APPLICATION NO.1579 OF 2023

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Rupesh Tahilram Dhirwani and Anr.

...Applicants

vs.

The State of Maharashtra and Ors.

...Respondents

Mr. Vivek Punjabi a/w. Ms. Kinnari Mehta, for the Applicants

Mr. S.R. Agarkar, APP for the State.

Mr. Amit Desai, Senior Advocate i/b. Mr. Amol Shirke, for
Respondent No. 2.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 21, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. By this application filed under section 482 of the Code of Criminal Procedure, 1973 (the Code), the applicants have assailed the legality, propriety and correctness of an order dated 24th February, 2023 passed by the Special Executive Magistrate, Nashik purportedly under section 145(2) of the Code directing the applicants to hand over possession of the ground floor premises, plot No. 68/4, MIDC Satpur, Nashik.

3. In the backdrop of the view, which this Court is persuaded to take, it may not be necessary to note the facts of the case elaborately. Suffice to note that respondent No. 2 had filed a

proceeding before Special Executive Magistrate on 18th January, 2023, alleging inter alia that the applicants had unlawfully dispossessed. M/s. Shah Electro Ceramics Private Limited (M/s. Shah) of which respondent No. 1 claimed to be a Manager, of the ground floor of the building situated at Plot No. 68/4, MIDC, Satpur, Nashik. Thereupon, recording a satisfaction that a dispute likely to cause a breach of peace exists, the Special Executive Magistrate issued a notice under section 145 (1) of the Code calling upon the parties to put in written statement of their respective claims as respects the fact of actual possession of the subject of the dispute. Post inquiry, by an order dated 24th February, 2023 the Special Executive Magistrate recorded that the applicants had illegally encroached on the ground floor, and directed them to vacate the subject premises.

4. When the application was listed before the Court on 28th March, 2023 this Court was persuaded to grant ad-interim relief, recording inter alia that in the FIR lodged on 24th December, 2021, the respondent No. 2 had alleged that the applicants had committed encroachment over the subject premises and thus the exercise of power under section 145(2) of the Code resulted in miscarriage of justice.

5. As regards the alleged dispossession or illegal encroachment, the facts appear to be rather incontrovertible. In the application which was filed by the respondent No. 2 before the Special Executive Magistrate on 18th January, 2023, it was categorically mentioned that the applicants had allegedly illegally encroached over the ground floor and in respect of the said illegal act FIR was lodged on 14th December, 2021. Evidently, respondent No. 2 did not claim that M/s. Shah was in possession of the subject premises on the date of the order under section 145(1) or that it was forcibly and wrongfully dispossessed within two months next before the date on which the said application was filed by respondent No. 2.

6. In the circumstances, Mr. Amit Desai, learned senior counsel for respondent No. 2, fairly submitted that, in the facts of the case, the interdict contained in the proviso to sub section (4) of section 145 of the Code comes into play. Mr. Desai, however submitted that the impugned order is restricted to the ground floor of the premises situated at Plot No. 68/4, MIDC, Satpur, Nashik and that aspect needs to be clarified.

7. In the backdrop of the aforesaid un-controverted facts, the impugned order suffers from illegality as M/s. Shah had allegedly

been dispossessed in the month of December, 2021 itself. The Special Executive Magistrate thus, committed a manifest error in law in directing the applicants to vacate the ground floor of the subject premises. Thus, the impugned order deserves to be quashed and set aside.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The impugned order dated 24th February, 2023 passed by the Special Executive Magistrate, Nashik stands quashed and set aside.
- 3] Since the impugned order expressly refers to the ground floor portion as the property in dispute, this order would not have bearing on the dispute between the parties with regard to the property which was not the subject matter of the proceedings before the Special Executive Magistrate and this Court shall not be deemed to have expressed any opinion in respect of the other disputes between the parties.
- 4] Application disposed.
- 5] No costs.

(N. J. JAMADAR, J.)