



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

Criminal Writ Petition No.2/2024

Adv. Arvind s/o Krushnarao Waghmare,
Aged about 43 years, Occ.-Legal Practitioner,
R/o. Bharat Nagar, Amravati Road, Nagpur.

.... Petitioner.

Versus

1. State of Maharashtra, through its Principal Secretary,
Department of Home Affairs, Mantralaya, Mumbai-32.
2. Superintendent of Police,
Nagpur (Gramin), Civil Lines, Nagpur.
3. Sub Divisional Officer-cum-Sub Divisional Magistrate,
Saoner Division, Saoner, Tq, Saoner, Dist. Nagpur.
4. Sub Divisional Police Officer, Saoner Division, Saoner,
Tah. Saoner, Dist. Nagpur.
5. Police Station Officer, Police Station Kalmeshwar,
Tq. Kalmeshwar, Dist. Nagpur.
6. Tahsildar, Kalmeshwar, Office of Tahsildar,
Kamleshwar, Dist. Nagpur.
7. Vasanatrao s/o Govindrao Muke,
aged about 74 years, Occ. Nil,
R/o.Bhim Nagar, Rameshwari Road, Nagpur.
Presently illegally residing at Govari Shivar,
Tq. Kalmeshwar, Dist. Nagpur.

.... Respondents.

Mr. A.K. Waghmare, petitioner in person.
Mr. M.K. Pathan, APP for resp. nos. 1 to 6.
Mr. R.D. Hajare, Advocate for resp. no.7 (appointed).

CORAM : Smt. Vibha Kankanwadi & Mrs. Vrushali V. Joshi, JJ

Closed on : 24-06-2024.

Pronounced on : 10-07-2024.

J u d g m e n t (Per Smt. Vibha Kankanwadi, J.)

. By invoking the constitutional powers of this Court under Article 226 of the Constitutional of India, the petitioner in person seeks Writ of Mandamus to direct the Police Authorities and/or Revenue Authorities to remove the respondent no.7 and his family members from agricultural field which is stated to be belonging to the petitioner. By way of amendment, he has prayed for directions for further investigation under Section 173(8) of the Code of Criminal Procedure ("Cr.P.C.", for short).

2. Heard the petitioner in person, learned APP for respondent nos.1 to 6 and Mr. Hajare, Advocate (appointed) to represent the cause of respondent no.7.

3. It will not be out of place to mention here that, we have heard basically on the point of maintainability.

4. It has been vehemently submitted on behalf of the petitioner in person that in the present case for the peculiar facts and circumstances and to protect the Rule of Law, he has given the history of litigation and submits that up to the Hon'ble Apex Court it has been held that he is the owner of agricultural land bearing Kh.No.46, Mouza Govari at Tahsil Kalmeshwar, District Nagpur, which is admeasuring to the extent of 3.26HR. He has submitted that in Second Appeal Nos.457/2015 and 458/2015, this Court held that he is the owner thereby the judgment and decree passed by the Courts below were set aside and the special

suit filed against him was dismissed on the ground of limitation. The order passed by this Court is then upheld by Hon'ble Apex Court in Civil Appeal No(s).6359-6360 of 2019 on 28-01-2020. He then submits that thereafter the possession of the property was given under the document stayed as 'Letter of Delivery of Possession and Acknowledgment' on 11-12-2020, by the original plaintiffs. Still now, the respondent no.7 is not handing over the possession or he is unauthorizedly occupying the portion of the land. He had made several requests to the Police Authorities that respondent no.7 should be removed, however, no action has been taken by the Police. The respondent no.7 and his family members are repeatedly committing crime and the Police Authorities are not doing anything, and therefore Writ of Mandamus is the only option. The petitioner in person also submitted that the respondent no.7 and his family members in collusion with the statutory Authorities as well as the 'Land Mafiyas' and on the basis of their alleged act, the petitioner cannot be asked to undertake the legal action once again. When it has been confirmed even by the Hon'ble Apex Court that he is the owner of the property, then repeated acts of violation in the form of disturbing his possession over the property amounts to infringement of his fundamental rights.

5. The party in person has relied on *Shalini Shyam Shetty and another vs Rajendra Shankar Patil*, reported in *(2010) 8 SCC 329*, wherein it has been held that 'the writs can be

issued to persons who have some statutory or public duty to perform and even in civil/private disputes High Court can interfere if there is violation of some statutory duty on the part of some statutory Authority or any infraction of statute or it can be shown that a private individual is acting in collusion with the statutory Authority'.

Further reliance has been placed on the decision in *Vidya Devi v State of Himachal Pradesh and others*, reported in *(2020) 2 SCC 569*, wherein it was again reiterated that 'the right to property as a human right, constitutional right under Article 300-A provides that no person shall be deprived of his property save by Authority of or by procedure established by law'.

Further reliance has been placed on *Dalmia Cement (Bharat) Limited and another vs Union of India and others*, reported in *(1996) 10 SCC 104*, wherein it has been observed that 'law is the manifestation of principles of justice, equity and good conscience. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual would exercise his rights to his best advantage to achieve excellence, subject to protective discrimination. The best advantage of one person could be the worst disadvantage to another. Law steps in to iron out such creases and ensures equality of protection to individuals as well as group liberties'.

Further reliance has been placed on the Three Judge Bench decision in *Mani Subrat Jain etc vs State of Haryana and others*, reported in *AIR 1977 SCC 276*, wherein it is

observed that 'it is elementary though it is to be restated that no one can ask for mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something'.

Further reliance has been placed on *Bokaro and Ramgur Ltd others vs State of Bihar and another*, reported in *AIR 1963 SCC 516* (Constitutional Bench), wherein it has been held that 'before a party can complain of an infringement of his fundamental right to hold property he must establish that he has title to that property and if his title is in dispute and is the subject of adjudication in proceedings legally constituted for example, an enquire under Section 4(h) of the Bihar Land Reforms Act, he cannot put forward any claim based on his title until as a result of that enquiry he is able to establish his title. It is only thereafter that the question whether his rights in or to that property have been improperly or illegally infringed could arise'. It is submitted that the petitioner has complied with this requirement he has been held to be the owner, therefore he is seeking Writ of Mandamus when the fundamental right is infringed.

Further reliance has been placed on *Nashik Merchant Co-operative Bank vs District Collector, Jalna and others*, reported in *AIR 2023 Bombay 181*, wherein it is observed that 'it is necessary to deprecate rising tendency of using criminal

force against recovery proceeding undertaken by the financial institutions'. These observations were pursuant to the observation and the fact that a person who had taken the law into his hands by force then was found to seek benefit of legal principles.

He further relies on *Tripurari Prasad Singh vs State of Bihar and others*, reported in *AIR 2023 (NOC) 628 (PAT)*, wherein Hon'ble Patna High Court went on to discuss when writ jurisdiction can be exercised under Article 226 of the Constitution of India.

Further reliance has been placed on *Sivanmoorthy and others vs State represented by Inspector of Police*, reported in *(2010) 12 SCC 29*, wherein it was held that 'further investigation under Section 173(8) of Cr.P.C. can be ordered'.

6. *Per contra*, learned Advocate appearing for respondent no.7 has submitted that the petitioner has filed RCS No.16/2022 before Civil Judge Junior Division, Kalmeshwar for grant of decree of permanent injunction against the defendants restraining them from interfering with the peaceful and legal possession of the plaintiff and thereafter by way of amendment he sought decree of mandatory injunction. Present respondent no.7 is defendant no.3 in the said suit, therefore when the matter is *subjudice* before the competent Civil Court, wherein the prayer is same, there is no question of issuing Writ of Mandamus.

7. Learned APP relies on the affidavit in reply filed by Yogesh Shivaji Kamale, Police Inspector attached to Kalmeshwar Police Station and submits that already Crime No.941/2022 has been filed so also FIR vide Crime No.268/2022 has been filed one more Crime No.390/2022 has also been registered against respondent no.7. Based upon the contents in the FIR actions have been taken. The petitioner is seeking action under Section 145 of the Cr.P.C. also. However, taking into consideration the chequered history, it is not taken. He has given all the details as to which actions have been taken whenever the petitioner approached the Police Authorities and therefore he refuted the allegations that the Police are acting as per the tune of respondent no.7 or any 'Land Mafiya'.

8. As aforesaid, we are only considering the maintainability of the petition. In the Second Appeals decided by this Court on 03-09-2018, it appears that the Gift Deed in favour of the petitioner was held to be valid. Upon the due execution of the Gift Deed, it can be concluded that the petitioner is the owner of the property that has been gifted under the Gift Deed i.e. the said immovable property. The possession was directed to be given within three months to the petitioner in the appeals before the Hon'ble Apex Court, the order passed by this Court was upheld. The petitioner then relies on the possession receipt and as per the said possession receipt executed on 11-12-2020 by Baba Jasbir Singh Pyarasingh Kalsi and

another, who are directed by this Court to handover the possession, had handed over the possession to original defendant who is the present respondent no.7. We are unable to get the name of the petitioner in the said 'Letter of Delivery of Possession and Acknowledgment', but then there is another sheet annexed in which it is stated that the petitioner has received the possession from one Jyoti Mane and others and it is then stated that said Jyoti Mane and others had given the possession of the property to present respondent no.7. Now, if we consider the copy of plaint in RCS No.16/2022 filed by the present petitioner before the Civil Judge, Junior Division, Kalmeshwar, then it can be seen that respondent no.7 has been made as defendant no.3 and though initially the suit was for permanent injunction, by way of amendment following prayer has been made.

"(i-a) Grant decree of mandatory injunction and/or appropriate injunction and/or decree and thereby order that the encroachment made on the pucca construction on the extreme southern side portion of the field of the present plaintiff by the defendants, be removed and necessary police protection be also ordered at the time of removal of said encroachment made by the defendants."

9. Now taking into consideration the prayer (i) before this Court and the civil suit would be the same. Further when there are disputed facts emerging as to how the possession of the property has travelled, then this Court cannot go in to the disputed facts when legal civil remedy has been claimed by the

petitioner, there is no question of issuing Writ of Mandamus by resorting to constitutional powers of the Court under Article 226 of the Constitution of India.

10. The ratio laid down by the Hon'ble Apex Court in all the above cases decided by Hon'ble Apex Court are binding on this Court, yet taking into consideration the peculiar facts of this case and when already the petitioner has approached the Civil Court, it cannot be concluded that the fundamental right enshrined under Article 300-A of the Constitution of India, has been infringed here.

11. As regards the further investigation under Section 173(8) of Cr.P.C. is concerned, it appears that on some surmises the petitioner is contending that the Police Authorities should initiate action under the Maharashtra Organized Crime Act. It is not demonstrated as to how the respondent no.7 is acting in collusion with other authorities and how it has amounted to crime syndicate. If at all the petitioner is of the opinion that some other offences are being transpiring in the existing case i.e the offence, he is at liberty to approach the concerned Magistrate by filing a private complaint. For that purpose, writ petition is not maintainable.

12. For the above said reasons, we hold that the Writ Petition under Article 226 of the Constitution of India is not maintainable, in view of the fact that the petitioner has already

approached the competent Civil Court. Hence, the petition stands dismissed at the threshold.

(Mrs. Vrushali V. Joshi, J.)

(Smt. Vibha Kankanwadi, J.)