



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

7 CRIMINAL WRIT PETITION NO. 88 OF 2025

- 1] Sakhubai w/o Kisan Gaikwad,
Age: 74 years, Occ: Nil, R/o:
Tapowan Road, Savedi
Taluka and Dist. Ahmednagar.
- 2] Suman w/o Tabaji Patole
Age: 84 years, Occ: Nil
R/o: Nepti Fata, Nepti
Taluka and Dist. Ahmednagar.
- 3] Gaubai w/o Bhaskar Ghatvisawe,
Age: 76 years, Occ: Nil
R/o: Nimgaon Wagha,
Tq. Nagar District: Ahmednagar.
(G.P.A. Holder for petitioner Nos 1 to 3
Raju s/o Kisan Jae,ee,
Age: 45 years, Occ: Advocate
R/o: Tapowan Road, Savedi
Tq. and District Ahmednagar.)

... Petitioners

Versus

- 1] The State of Maharashtra
Through its Secretary,
Revenue & Forest Department,
Mantralaya Mumbai-32
- 2] The Collector,
Collector Office, Ahmednagar.
- 3] The Sub Divisional Officer,
Ahmednagar.
- 4] The Tahsildar,
Tahsil Office, Ahmednagar
Taluka and District Ahmednagar.

5] The Joint Sub Registrar Class-II
(North), Parag Building,
Ahmednagar.

... Respondents

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Mr. Dattatraya Rambhau Markad, Advocate for Petitioners.

Mr. A. D. Wange, APP for Respondents.

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CORAM : **SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 28th March, 2025.

Per Court:

. The present petition has been filed for the following relief:-

“B) That by issuing a writ of mandamus or any other appropriate writ, order or directions in the like nature the respondent authority specially respondent no. 5 Joint Sub Registrar, Ahmednagar Class-II (North) Ahmednagar may kindly be directed to decide the application dated 2.7.2024 filed by the petitioners by making detail enquiry in respect of dummy lady put before the Joint Sub Registrar in place of petitioner no.2 for execution of consent deed No. 2768 of 2009 dated 09.06.2009 executed before the respondent no.5 and further direct to register the offences against the concern persons who are found guilty for the said illegal act.”

2 Heard the learned counsel for the petitioners and the learned APP for all the respondents.

3 The learned counsel for the petitioners submits that petitioner No.1 had filed R.C.C. No.10 of 1988, before the learned Joint Civil Judge Junior Division, Ahmednagar, for partition and separate possession against her mother and brothers to which present petitioner Nos.2 and 3 were also parties. That suit came to be decreed on 30th April, 1997 and the shares of the parties were determined. According to the petitioners, the possession of the suit properties was handed over to the concerned parties by the appropriate authority on 15th October, 2003. According to the petitioners, the land Gut No.126/1 admeasuring 12 Hectare 10 R with Gairan land 82 R from village Nimgaon Wagha, Taluka and District Ahmednagar, was one of the properties in the said suit. The land admeasuring 4 Hectare 30 R out of said Gut No.126/1 came to be mutated vide Mutation Entry No.2683 in the name of the Petitioners. According to the petitioners, their father was the protected tenant and one Ashok Gandhe and Subhash Gandhe were the landlords. The brothers of the petitioners had filed Tenancy Case No.5 of 2001, before the Tahsildar, Ahmednagar against the landlords. The petitioners were not made party to the said proceedings though it is stated that their names came to be recorded as tenants. Therefore, the petitioners had filed application for

impleading them in the said proceedings. The said application came to be allowed so also the tenancy case came to be allowed and the price of the land was fixed as per Section 32(G) of the Bombay Tenancy and Agricultural Lands Act, on 28th February, 2013. The price amount was directed to be paid within a period of one year. According to the petitioners, the brothers of the petitioners had preferred Tenancy Appeal No.5 of 2013, before the Sub-Divisional Officer, Ahmednagar, challenging the said decision in tenancy case and in the said appeal, the Sub-Divisional Officer by order dated 13th April, 2015, removed the names of the petitioners and others from the revenue record. However, before the learned Maharashtra Revenue Tribunal, Aurangabad, both the parties amicably settled their dispute and compromise to that effect was filed on 7th February, 2017, which was then recorded by the learned Tribunal. As per the said compromise, the petitioners have received 17 Acres i.e. 6 Hectare 40 R land from Gut No.126/1. Still, proper mutation was not recorded and therefore, once again there was litigation before the Revenue Officers. The petitioners are then contending that during the pendency of Tenancy Case No.5 of 2001, before the Tahsildar, the original landlord illegally sold out some portion of the land i.e. to the extent of 2 Hectare 83 R from Southern side of said Gut number to one Ashok Shivilal Gandhi and Rakhi Sagar Gandhi on 26th June, 2008. It is the contention of the petitioners that purchaser Ashok Gandhi was very well aware about

the proceedings before the Revenue Court. To fill up the lacuna, said Ashok Gandhi had registered one consent deed on 9th June, 2009, before respondent No.5 after execution of the registered sale-deed dated 26th June, 2008. According to the petitioners, there was impersonation and some third lady was presented before respondent No.5 for executing the documents. Now, the petitioners say that the petitioners were unaware about the illegal acts done, but came to know about the same and thereafter, filed an application on 2nd April, 2024, before respondent No.5 for conducting enquiry under Section 82 of the Registration Act. Though the notices were issued, yet it has not been completed and respondent No.5 is not taking any decision and therefore, this petition.

4 The first and the foremost fact to be noted is that Section 83 of the Registration Act, in fact, is an enabling provision, which gives power to the Registering Officer to commence prosecution. He can initiate the offence after coming to the knowledge in his official capacity thereof or with the permission of the Inspector General, Registrar or Sub-Registrar, in whose territories, district or sub-district, the offence has been committed. Section 82 of the Registration Act, prescribes penalty for making false statements, delivering false copies or translations, false personation, and abetment. The punishment provided is to the extent of seven years, or with fine, or with both.

5 Perusal of the application filed on 2nd July, 2024, would reveal that there is absolutely no statement as to when exactly or approximately the petitioners got the knowledge about two documents i.e. dated 26th June, 2008 and 9th June, 2009. It appears that on 2nd September, 2024, say has been given by the petitioners, which is running in pages and it also appears that say has been given by Ashok Shivlal Gandhi in whose name the sale has been effected.

6 Now, even indirectly this Court cannot direct respondent No.5 to register an offence because it is his decision whether to take up the prosecution as contemplated under Section 83 of the Registration Act for the offence under Section 82 of the said Act. Further, the petitioners themselves when can lodge the FIR, they should not rely upon any other authority also. There is no necessity to waste the time. The procedure laid down for lodging FIR under Section 154(1) of the Cr.P.C. is always available to the petitioners and if police avoid registration of the offence or refuse to register the offence then by adopting proper procedure as laid down in ***Mrs. Priyanka Shrivastava and Another Vs. State of Uttar Pradesh***, reported in, ***AIR (2015) SC 1758***, the other remedy is also available to the petitioners under Section 156(3) of the Cr.P.C. When this Court cannot direct registration of the offence directly, it cannot be got done

by the petitioners indirectly and therefore, if at all the petitioners desire to take any action, they are at liberty.

7 With these observations, we dispose of the criminal writ petition.

nga [SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]