



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 231 OF 2019

**RAMGOPAL RAMCHANDRAJI DARAK
(DIED) THROUGH HIS LEGAL REPRESENTATIVES**

- A] Smt. Chanchalabai Ramgopal Darak
Age: 74 years, Occu: Household,
R/o. 14/15, Pranav Plaza,
Bhaji Market, Aurangpura,
Chh. Sambhajinagar.
- B] Kalpana Bharat Jakhotla
Age: 56 years, Occu: Household,
R/o. Plot No.92, Burudgaon Road,
Sai Nagar, Ahemednagar.
- C] Shrivalabh Ramgopal Darak
Age: 52 Years, Occu: Business,
R/o. 14/15, Pranav Plaza,
Bhaji Market, Aurangpura,
Chh. Sambhajinagar.
- D] Hanuman Ramgopal Darak,
Age: 50 years, Occu: Business,
R/o.14/15, Pranav Plaza,
Bhaji Market, Aurangpura,
Chh. Sambhajinagar.
- E] Premlata Pawankumar Dhoot
Age: 48 years, Occu: Household,
R/o. Laxminarayan Nagar CHS,

Erandwane, Pune.

...PETITIONERS

VERSUS

- 1] The State of Maharashtra
Through Police Inspector,
Mukundwadi Police Station,
Aurangabad.
- 2] The Special Executive Magistrate-Cum-
Assistant Police Commissioner,
Osmanpura Division, Osmanpura, Aurangabad.
- 3] Yusuf Akbar Ali Virani
Age: 49 years, Occu: Business,
R/o. Fazalpura, ST Colony,
Aurangabad.

...RESPONDENTS

Mr. Dhiraj R. Jethliya, Advocate for petitioners.

Smt. Chaitali Chaudhari-Kutti, APP for Respondent Nos. 1 and 2-State.

Mr. Kshitij Surve, Advocate for Respondent no.3.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 20th AUGUST 2025.

PRONOUNCED ON : 11th SEPTEMBER 2025.

PC :-

1. Heard Mr. Jethliya, the learned Advocate for the petitioners, Smt. Chaudhari-Kutti, the learned APP for Respondent Nos. 1 and 2-State and

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Mr. Surve, the learned Advocate for Respondent No.3. This writ petition is heard for final disposal at the stage of admission with consent of the parties.

2. A challenge in this petition is to an order dated 15th July 2017, passed by the learned Special Executive Magistrate -cum- Assistant Police Commissioner, Osmanpura, Aurangabad in case No. 1/2008. By way of impugned order, the learned Special Executive Magistrate has passed an order under Section 145 of Cr.PC., restraining the parties from taking possession of the property. The parties are directed to take recourse to civil proceedings.

3. The facts, as stated in the petition, in short, are that the present petitioner purchased the property i.e. two shops/shutters Nos.2 and 3 in a building constructed on plot No.24, Survey No.51/3, Vijay Nagar, Garkheda, Aurangabad. He purchased the property from one Balaprasad Shivnarayan Sharma vide document dated 14th January 2003, before notary. On the strength of the said document, the name of petitioner

came to be entered in the record maintained by Municipal Corporation as owner/occupier.

4. Thereafter, the respondent No.3 filed a complaint before the Police with the allegation that the petitioner had removed lock of Respondent No.3 and put up his own lock on both the shops and took forcible possession. On that, the complaint was made to the Police. The police sent notice to the petitioner and submitted report to the Special Executive Magistrate, CIDCO area, Aurangabad City under Section 145 of Cr.P.C. The Special Executive Magistrate, expressing that there was a likelihood of communal tension and a potential effect on public peace, directed that the shops be sealed and took possession of the shops. The said order came to be challenged by the petitioner in the court of learned Sessions Judge. The learned Sessions Judge by order dated 29th January 2010 remanded the matter directing the Magistrate to decide the matter afresh by issuing fresh notices. The petitioner challenged the order passed by the learned Sessions Judge by filing Criminal Writ Petition No.160 of 2010. This Court vide order dated 14th December

2012 refused to entertain the writ petition and directed the learned Special Executive Magistrate to decide the case on the basis of evidence.

5. It is thereafter the parties again approached the learned Special Executive Magistrate. The learned Magistrate, upon hearing the parties, passed the impugned order.

6. Learned Advocate Mr. Jethliya, appearing for petitioner, vehemently argued that there is a sale-deed in favour of present petitioner showing that he purchased the property on 24th June 2002 from one Farida Y. Virani. There is no dispute about the said document. The property was in possession of the petitioner. The learned Magistrate has wrongly passed the order. The possession ought to have been handed over to the petitioner. He further submits that there are two witnesses stating that respondent No.3 had forcibly taken possession. However, evidence of the said witnesses is not considered by the authority, which has caused serious prejudice. He thus submits that the application ought to have been allowed by the executive Magistrate.

7. The learned Advocate for the petitioner has relied upon the following judgments.

- (i) *Dhariwal Tobacco Products Ltd. And Ors. Vs. State of Maharashtra and Anr.*¹;
- (ii) *Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority and Ors.*²;
- (iii) *Ashok Kumar Ghose Vs. Khetra Mohan Das*³;
- (iv) *Smt. Renu Sachdeva Vs. Commander*⁴;
- (v) *Executive Engineer Vs. Sri Seetaram*⁵.

8. Learned Advocate Mr. Surve, appearing for respondent No.3, at the outset, submits that there is an alternative remedy available of filing revision before the learned Sessions Court. The petitioner has directly challenged the order in this Court. Secondly, he raises the preliminary objection. He submits that the impugned order is passed on 15th July 2017 and the petition is filed on 7th February 2019. The petition deserves to be dismissed on the ground of delay and laches. On merits, he

1 (2009) 2 SCC 370

2 AIR 2023 SC 781

3 1991 Cri. L. J. 1796

4 1985 Cri. L. J. 688

5 (2012) 2 SCC 108

submits that there is no direct witness stating that the possession was with the petitioner and the respondent no.2 has taken forcible possession. He thus submits that even on merits, there is no case in favour of the petitioner. He prays for dismissal of the writ petition.

9. He further submits that the order is rightly passed. He prays for rejecting the writ petition. It is his case that the property belongs to him just to create a problem, the proceeding under Section 145 of Cr.P.C was initiated instead of approaching the civil Court. The matter is purely of a civil nature and requires adjudication at the hands of civil Court.

10. In the case of *Dhariwal* (supra), the Hon'ble Apex Court held that it is the duty of the High Court under Section 482 of Cr.P.C. to exercise the power to prevent the abuse of process of law. It also considered Section 483 of Cr.P.C. which casts a duty upon the high Court to exercise continuous superintendence over courts of judicial magistrate. The inherent powers need to be exercised. This Court finds that there is no dispute about the said proposition.

11. In the case of ***Godrej Sara Lee Ltd.*** (supra), the Hon'ble Apex Court had laid down that an alternative remedy is not a bar. In the said case, the High Court refused to entertain the writ petition as not maintainable as alternative remedy is provided under the statute. It is held that the High Court still has the jurisdiction to entertain the writ petition. There is no dispute about the said proposition. In the present case, this Court finds that no case is made out to bypass the remedy.

12. In the case of ***Ashok Kumar Ghose*** (supra), the Hon'ble Apex Court considered the provisions of Sections 145, 147 of Cr.P.C., revisional power under Section 398, and inherent power under Section 482 of Cr.P.C. In the said case, it is held that the magistrate must be satisfied that the dispute was likely to cause breach of peace. In the said case, it is held that mere existence of a dispute is not sufficient to invoke power under Section 145 of Cr.P.C. The magistrate must be satisfied that because of the dispute, there is likely to be law and order situation disturbing peace of the society.

13. In the case of ***Smt. Renu Sachdeva*** (supra), it is held that the police have no power to seal the premises. The said power is only with the Magistrate to attach the disputed property under Section 146 of Cr.P.C. on satisfaction that the ingredients of this Section do exist. It is considered that the object of section 145 is to prevent breach of peace and to provide speedy remedy by bringing the parties before the court and ascertaining which of them was in actual possession and to maintain status quo until their rights are determined by a competent court. the Sections require that the magistrate must satisfy himself before initiating proceedings that a dispute regarding an immovable property exists and that such dispute is likely to cause breach of peace. In the present case the dispute is of 2010. Till now, there is no law and order situation created. This court thus find that the dispute is purely of civil nature.

14. This Court has gone through the impugned judgment and order. It is seen that there is no sale-deed on record. The document styled as a sale-deed is a document signed before the notary. Thus, there is no document of title. Though it is the case of the petitioner that in the

record of Municipal Corporation, the petitioner is shown to be the owner of property. However, that document can hardly be taken as document of title. So far as witnesses are concerned, though it is submitted that witnesses have stated that respondent No.3 has taken forcible possession, the authority has recorded a finding that the witnesses have not seen the alleged dispossession. The learned authority could not rely upon the said evidence and has passed the order. This court finds that there is alternative remedy. There is no convincing reason as to why the alternative remedy is not availed. Secondly, there is delay and laches on the part of the petitioner in approaching this Court. The impugned order is dated 15th July 2017 whereas the petition is filed on 7th February 2019. On this ground also this Court is not with the petitioner.

15. So far as merit is concerned, this Court finds that the petitioner does not have a good case even on merits. The learned Authority has rightly observed that there is no document of title on record. Secondly, the court disbelieved the petitioner stating that the statement of the witnesses were only that they came to know about the alleged

dispossession. There is no evidence to clearly show that the petitioner is dispossessed from the property. Thus, even on merits, this Court is not convinced.

16. Considering above, it is clear that this is purely a case of civil nature. The parties need to approach civil court to establish their rights. This Court does not find any reason calling for interference at the hands of this Court. Hence, the following order:

ORDER

- (i) Criminal Writ Petition stands dismissed and disposed off.

[KISHORE C. SANT, J.]