



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

CRIMINAL WRIT PETITION NO. 400 OF 2025

**RAMBHAU SAKHARAM GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the Petitioner : Mr. Raundale Sanjay Raghunath
APP for the Respondent Nos. 1 to 3 : Mr. K.K. Naik
Advocate for Respondent no.4 : Senior Counsel Mr. P.R. Katneshwarkar
i/by Fulfagar Anuj Ajay
...

CORAM : SHAILESH P. BRAHME, J.

DATE : 3rd APRIL 2025

PER COURT :

. This petition is directed against the order dated 28.01.2025 passed by Special Executive Magistrate, Cantonment Division, Chhatrapati Sambhaji Nagar under Section 145 of the Code of Criminal Procedure. On the last occasion, a preliminary objection was raised by the Senior Counsel appearing for Respondent No.4. Petitioner was given time to address the Court on the objection of maintainability of the petition, as alternate efficacious remedy is available.

2. Learned Counsel for the Petitioner submits that this Court has jurisdiction under Section 482 of the Code as there is abuse of process of law. The Executive Magistrate committed error of jurisdiction. The title and the possession of the Petitioner is settled

and is armed with the documentary evidence to that effect. It is submitted that in the revenue record also corroborates his claim. As against that Respondent No.4 does not have any title, interest or possession in the disputed land. It is further submitted that the proceeding of Writ Petition No.10804/2022 filed by Respondent No.4 in the High Court are pressed into service which are wholly inapplicable. The Petitioner is concerned with 80R of land from Gut No.135, which was not the subject matter before High Court. It is further submitted that there was no cause of action for the Respondent No.4 to resort to Section 145 of the Code.

3. Admittedly order passed by the Special Executive Magistrate under Section 145 is directly challenged in this Court. Alternate efficacious remedy is available to the Petitioner under Section 397 of the Code. It is specifically prescribed by way of explanation that even the order passed by the Executive Magistrate or Judicial Magistrate would be amenable under Section 397.

4. The submission of learned Counsel that there was no cause of action, the Respondent No.4 had no title, right or interest in the subject matter, Writ Petition No.10804/2022 was not relating to the subject matter can be agitated before the Revisional Authority. Alternate remedy cannot be bypassed by resorting to provision of Section. No case is made out that exceptional circumstances exist to entertain matter under Section 482 or Article 227 of the Constitution of India. It would be open for the Petitioner to raise all the grounds

of objection before the Revisional Authority.

5. In view of above, this Court cannot entertain the Writ Petition. Hence the Criminal Writ Petition is dismissed for having alternate efficacious remedy to the Petitioner. It would be open for the Petitioner to avail remedy as permissible in law.

SHAILESH P BRAHME
JUDGE

NATEEB..