



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

CRIMINAL WRIT PETITION NO.614 OF 2023

Somesh Marutirao Kaletwad,
Age-46 years, Occu:Agriculturist,
R/o-Natkar Galli, Deglur,
Taluka-Deglur, District-Nanded.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Principal Secretary,
Home Department, Mantralaya,
Mumbai,
- 2) The Director General of Police,
Police Headquarters, Mumbai,
- 3) The Deputy Inspector General of Police,
Nanded Range, Nanded,
- 4) The Superintendent of Police,
Nanded,
- 5) The Police Inspector,
Deglur Police Station,
Deglur, District-Nanded.

...RESPONDENTS

...
Ms. Rohini Wagh Advocate a/w. Mr. Sushil Shilwant
Advocate and Mr. Aulekh Wagh Advocate for Petitioner.
Mr. G.A. Kulkarni, A.P.P. for Respondent Nos. 1 to 5.
...

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

DATE OF RESERVING ORDER : 08th AUGUST 2025

DATE OF PRONOUNCING ORDER : 18th SEPTEMBER 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed for following reliefs:-

"A) To quash the communication dated 03.02.2023 issued by the Police Inspector, Deglur Police Station, by issuing writ of certiorari or any other writ or order as the case may be,

B) To direct the respondents to register FIR pursuant to complaint preferred by the petitioner and conduct thorough investigation to identify all the persons involved in the crime, by issuing the writ of mandamus, or any other appropriate writ, order or direction as the case may be,

C) To call report from the concerned Police Station regarding inquiry done upon the complaint of the petitioner, pending hearing and final disposal of this Writ Petition,

D) To direct respondents to appoint an unbiased Officer of IPS Cadre of the rank of the Deputy Inspector General of Police (Other than Nanded Range) or Commissioner of Police or Protection of Civil Right Department, Nanded to conduct fair, impartial and effective investigation after registration of F.I.R. and to submit the report of the investigation within 90 days, by issuing the writ of mandamus, or any other appropriate writ, order or direction as the case may be,

E) To direct the respondent Nos. 1 and 2 to conduct disciplinary inquiry against the accused police officials for committing alleged crime and committing atrocities against the petitioner by issuing the writ of mandamus, or any other

appropriate writ, order or direction as the case may be.”

2. As regards prayer Clause E) is concerned, it will not be out of place to mention here that the present petitioner had approached the State Police Complaints Authority by filing SPCA/Complaint Case No.57 of 2023. The concerned authority, by Judgment and order dated 10th May 2024, partly allowed the said complaint case and those police officers who have allegedly not complied with the provision of Section 154(3) of the Code of Criminal Procedure and respondent No.4 therein, who has not complied with the provisions of Section 154(1) of the Code of Criminal Procedure, were held to have committed misconduct. The Government of Maharashtra was directed to treat the report as preliminary inquiry for the purpose of instituting disciplinary proceedings. Therefore, the competent authority has already given directions and therefore, prayer Clause E) no longer deserves to be considered.

3. Prayer clauses C) and D) would depend on prayer clause B). Prayer clause A) is in respect of communication dated 3rd February 2023 to be quashed and set aside. The said communication is a “*Samajpatrak*”, whereby it was informed to the petitioner that his complaint application dated 30th January

2023, in respect of incident dated 22nd January 2023, has been disposed of as it was given with ill-intention.

4. Heard learned Advocate Ms. Rohini Wagh for the petitioner and learned APP Mr. Kulkarni for the respondents.

5. It has been vehemently submitted by the learned Advocate appearing for the petitioner that the dispute is in respect of land bearing Gat No.603 admeasuring 35 R situated at Deglur, District-Nanded. The land is owned by Ramrao Linganna Pujalwar and others and one Maruti Lachamanna Kaletwad is the power of attorney holder of the owners. The said Maruti is the father of the petitioner. The petitioner states that name of the power of attorney is also entered into 7 X 12 extract. Adjoining to the said land, there is a police colony. Writ Petition No.9543 of 2021 was filed before this Court by the owners of the said land. The police department had started claiming ownership over the said disputed land and the said Petition is still pending for adjudication. Despite the matter being *subjudice* before this Court, illegal encroachment continued to be made by the accused persons. They had attempted to put board containing the names, levelling and fencing to the said land. It was without permission of the land owners. The father of the petitioner being

the general power of attorney, had lodged the complaint with Tahasildar, Deglur on 2nd March 2022, regarding the illegal encroachment over the said land by the police department. The Tahasildar had issued communication dated 12th December 2022, stating that no illegal encroachment should be made till the decision of the writ petition. When still the activities were going on, the petitioner and his father preferred complaint to Tahasildar on 28th November 2022. Thereafter the Tahasildar by letter dated 30th November 2022, directed the Circle Officer, Deglur to take appropriate steps and submit a report. In pursuant to same, Circle Officer issued communication dated 4th January 2023, to Deglur Police Station.

6. Learned Advocate for the petitioner further submits that the petitioner wanted the agricultural activities to be carried on and therefore, he was passing by the disputed land along with his nephew around 7.40 a.m., on 22nd January 2023. He found that excavation and filling of boulders was going on with the help of J.C.B. About 30 police personnel in civil dress were present there. The petitioner went near them and asked not to interfere in the disputed land, as the matter is *subjudice* before this Court, yet the Sub Divisional Police Officer, Sachin Sangle started assaulting the petitioner with fist blows thereby causing injury to

his face and ears. Police Inspector Sohan Machare pushed the petitioner away and assaulted with fist blows. Shrikant More, Police Sub Inspector and other four unknown police persons also assaulted the petitioner brutally. Threats were given to the life of the petitioner. Due to the fear, the petitioner took nephew with him and went away. He had then gone to sub-district hospital, Deglur and got himself medically examined. He was then referred to district hospital, Nanded where he was treated. On the same day i.e. 22nd January 2023, petitioner approached the police station but his complaint was not taken. The petitioner's sister had called the helpline number of control room and tried to register the First Information Report (for short "the FIR"), however, the Superintendent of Police refused to take cognizance of the incident and on the contrary threat was given to lodge false FIR against the petitioner. Further illegal activities were carried out by the police personnel. The petitioner then preferred complaint dated 3rd February 2023 through and Advocate to Inspector General of Police, Nanded and other high rank officers and the authorities requesting for registration of the offence, however, it has gone in vain. The police inspector, under the garb of preliminary inquiry, disposed of his complaint, which is against the law laid down in *Lalita Kumar vs. State of Uttar Pradesh*,

(2014) 2 SCC 1. The petitioner has learnt that the C.C.T.V. footage is available about the incident from the cameras put up at bungalow belonging to one Mr. Uday Bhanudas Umarikar. The petitioner is a member of scheduled tribe and therefore, when his property is being grabbed and he was assaulted, there ought to have been a FIR. The police themselves have committed the atrocities and therefore, it is necessary that offence should be registered against them.

7. Affidavit-in-reply has been filed on behalf of respondent No.5 by Mr. Sanjay Bhimashankar Hibare, the Police Inspector, Police Station, Deglur, District-Nanded. He has denied all the allegations. It has been stated that the petition has been filed with an ill-intention to harass the police department. He states that the petitioner was never the owner and possessor of the land bearing Gat No.603 admeasuring 35 R. In fact the police department is the owner and possessor of land Gat Nos. 603 and 604, situated at Deglur. Those lands have been acquired for constructing the police quarters by Award No. R.B.W.S. II 177/60 dated 14th August 1961, by depositing the *Harzana* amount of Rs.5290/- on 27th January 1961. The details of the land acquired by the respondents have been given. He further states that after acquiring the above mentioned land in Survey No.213 which is

Gat No.603, in the year 1968, in all 41 police quarters were constructed by the Public Works Department. Electricity connection has been taken in the year 1967 for the said police quarters. The land from Survey No.214, present Gut No.604, admeasuring 1 Hectare and 14 R was acquired for the construction of the office and residential house of the Sub Divisional Police Officer and after measurement it was transpired that it is measuring only 1 Hectare and 1 R. The amount for the acquisition of the said land has also been paid. Further details about the history after 30th June 1965 and the events consequent to the provisions of Section 6(1)(a) of the Hyderabad Inam Abolition Act have been given. He further states that it has been falsely stated that the petitioner owns or possess any portion of the land. He states that Ramrao Pujalwar and others filed a Civil Suit bearing R.C.S. No.11 of 2008, before the learned Civil Judge, Senior Division, Biloli. The mutation entry on which the petitioner is relying, is false. The incident dated 22nd January 2023, is also false. An inquiry has been conducted after receiving the compliant application and it was found that there is no such incident that had taken place. When the petition has been filed with mala fide intention, it deserves to be dismissed.

8. The first and foremost fact that is required to be considered is that there appears to be the dispute in respect of the ownership of the land and the writ petition is already pending, so also the civil suit is also pending. Under such circumstance, this Court cannot go into those aspects. As regards the role of this Court or the subject matter before this Court is, the only incident that is alleged to have taken place on 22nd January 2023. We have already referred that the State Police Complaint Authority has taken note of, whether there is compliance of Section 154(1) and 154(3) of the Code of Criminal Procedure. We need not go into that aspect, but the fact remains that though there is decision in *Lalita Kumari vs. State of Uttar Pradesh*, (supra), further we are guided by the decision in *Priyanka Srivastava vs. State of U.P., (2015)6 SCC 287*, as to what a person who intends to lodge the FIR is required to do if his FIR is not taken. The present petitioner has not come with the case that he approached the learned Magistrate under Section 156(3) of the Code of Criminal Procedure. When it could be seen that he had allegedly complied with Section 154 and 154(3) of the Code of Criminal Procedure, then it was for him to approach the Magistrate under Section 156(3) of the Code of Criminal Procedure. This alternative remedy is available and

therefore, we would like to consider the decision in ***Sakiri Vasu Vs. State of U.P. and Others***, [(2008) 2 SCC 409], which is then again considered in ***T.C. Thangaraj Vs. V. Engammal and Others***, [(2011) 12 SCC 328]. In ***Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Others***, [(2016) 6 SCC 277] , after taking note of the decision in ***Sakiri Vasu Vs. State of U.P. and Others*** (supra), it has been observed that:-

"If the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. "

9. In ***Sakiri Vasu Vs. State of U.P. and Others*** (supra), it has been clearly observed that,

"if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court Under Article 226 of the Constitution of India, but to approach the Magistrate concerned Under Section 156(3) Code of Criminal Procedure."

10. Thereafter, in ***M. Subramaniam and Others Vs. S. Janaki and Others***, [(2020) 16 SCC 728], the Three Judge Bench of the Hon'ble Supreme Court, after relying upon all the above

decisions, observed that the High Court cannot direct registration of the FIR in such circumstance. The direction which was given by the High Court in this case to register the FIR was quashed and set aside. However, it was also made clear that it would be open to the informant-complainant to approach the Court of the Metropolitan Magistrate if deemed appropriate and necessary. We adopt the same recourse as adopted in ***M. Subramaniam and Others Vs. S. Janaki and Others***, (supra). Mainly taking into consideration the settled legal position in ***Sakiri Vasu Vs. State of U.P. and Others*** (supra), we dismiss the Writ Petition by expressing that we have not dealt with the merits of the case and whether the petitioner has disclosed any criminal offence or not. We grant liberty to the petitioner to approach the learned Magistrate under Section 175(3) of the Bharatiya Nyaya Suraksha Sanhita [old Section 156(3) of the Code of Criminal Procedure], and if such application is filed, then the concerned Magistrate to deal with it as per the provisions of law.

11. With the above observations, the Writ Petition stands dismissed.

[SANJAY A. DESHMUKH]
JUDGE

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[SMT. VIBHA KANKANWADI]
JUDGE