



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

54 CRIMINAL WRIT PETITION NO.899 OF 2019

TANAJI PREMRAJ GUNJAL (DIED) THROUGH ITS LEGAL HEIRS AND
OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. A.K. Bhosle, Advocate for petitioners – **absent**

Mr. A.R. Kale, APP for respondent Nos.1 to 3

Mr. S.S. Thombre, Advocate for respondent No.4

...

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

DATE : 18th FEBRUARY, 2025

ORDER :

1 Learned Advocate for petitioners is absent. We need not adjourn
the matter for the simple reason that petitioners were praying as follows -

“(A) That, by issuing Writ of Mandamus or any other writ or direction in the like nature the Respondent No.2 to 4 direct be Honour the Judgment and order dated 18.01.2016 in R.C.S. No.62/2001 passed by learned 3rd Jt. C.J.S.D., Aurangabad and order dated 20.04.2019 passed by learned C.J.S.D., Aurangabad below Exh.5 in R.C.S. No.369/2019.

(B) May kindly direct Respondent No.3 and its officers not to help and protect Respondent No.4 in their illegal activities of construction over the petitioners' land situated in Sy. No.8, Jadhavwadi, Tq. and Dist. Aurangabad.

(C) May kindly direct to the Respondent No.2 by making investigate in the applications/representations time to time made by petitioners and take an appropriate and legal action against the police officers who are helping directly or indirectly to the illegal activities of construction on petitioners' property by Respondent No.4 and for that purpose may kindly passed necessary order.”

and by way of amendment -

“(C-1) That, the Respondent No.2 may kindly be directed to make detailed inquiry in respect of the illegal criminal activities committed and illegal detention of the applicants including ladies up to late night by the police officers of CIDCO Police Station.

(C-2) That, the applicants may kindly be compensate by putting heavy cost on the police officers of the CIDCO Police Station who are illegally involved in the illegal activities of Respondent No.4 and the act of illegal detention of the applicants including ladies up to late night in the CIDCO Police Station.”

2 The petitioners were having ancestral agricultural land in Sy.No.8 admeasuring 15 Acre 35 Gunthas in village Jadhavwadi, Tq. & Dist. Aurangabad. On 26.06.1987 the Special Land Acquisition Officer, Jayakwadi Project, Aurangabad by way of Award acquired land of petitioners to the

extent of 03 H 15 R, but the concerned authorities have actually acquired only 01 H 61 R. But the Revenue authorities by way of Mutation Entry No.68 recorded in 7/12 extract the total land admeasuring 03 H 15 R. Therefore, the petitioners filed Regular Civil Suit No.62/2001 before learned Civil Judge Senior Division, Aurangabad for the relief of declaration, injunction and compensation. The said suit was decreed in favour of petitioners and respondent No.4 was permanently restrained. Respondent No.4 challenged the said order along with condonation of delay application, which came to be rejected by learned District Judge-12, Aurangabad by order dated 29.09.2018. During the pendency of Regular Civil Appeal respondent No.4 tried to dispossess petitioners. Therefore, petitioner No.3 made application dated 23.05.2018 to respondent Nos.2 and 3 requesting to take an appropriate action against respondent No.4. The concerned Police Officer has not taken any action against respondent No.4, but helped respondent No.4 in taking illegal possession from Eastern side of petitioners land. Second Appeal No.83/2019 filed by respondent No.4 is pending till today. It is alleged that respondent No.4 received police protection from respondent No.2 to continue the illegal constructions. Petitioners filed application dated 04.05.2019 to respondent No.2 requesting to prevent the police officers from doing illegal act. Thereafter, petitioners filed Regular Civil Suit No.369/2019 against respondent No.4 for perpetual injunction with application below

Exh.5 for temporary injunction. The application of temporary injunction has been granted by learned Civil Judge Senior Division, Aurangabad on 20.04.2019. It is alleged that respondent Nos.2 to 4 have not obeyed the Judgment and orders passed by learned Civil Courts and respondent Nos.2 and 3 without taking any action on the applications filed by petitioners, supported to respondent No.4 by giving illegal protection for the illegal construction on the petitioners land. Hence, the present petition.

3 Taking into consideration the aforesaid allegations or contentions in the petition it is to be noted that if at all the petitioners felt that they were aggrieved, then they could have approached the Police Station to lodge the report. If the decision in Regular Civil Suit No.62/2001 passed by learned 3rd Joint Civil Judge Senior Division, Aurangabad dated 18.01.2016 was in favour of petitioners, then the said decree could have been got executed by petitioners. There is no question that petitioners would come to a Criminal Court for direction to respondent Nos.2 to 4 to honour the Judgment and order. Similar is the case as regards order below Exh.5 in Regular Civil Suit No.369/2019 passed by learned Civil Judge Senior Division, Aurangabad on 20.04.2019. When there is a specific provision for execution of decree passed, then it cannot be achieved by way of writ petition, that too, on criminal side.

4 Further, the allegations in prayer clause B and C would reflect that as per the petitioners, respondent No.4 is carrying out some illegal activity or construction over the petitioners' land. Certainly, petitioners can once again approach in a different way before the Court of law and not by way of writ petition and further if the said decree and prohibition order is in favour of petitioners and it has been violated, then certainly action under the Contempt of Courts Act can also be taken. If at all the petitioners' First Information Report is not registered, then the petitioners will have to follow the decision in **Lalita Kumari vs. Government of Uttar Pradesh and others** [AIR 2014 SC 187]. In view of the decision in **Sakiri Vasu vs. State of Uttar Pradesh and others** [(2008) 2 SCC 409] this Court cannot direct registration of the offence. Further, as regards the amendment that has been carried out, again it reiterates regarding inquiry to be initiated in respect of illegal criminal activities. If the petitioners are certain that illegal activities have taken place, then certainly without any inquiry there can be a direct First Information Report. Now, some incidents appears to have taken place on 13.07.2019 i.e. in respect of agitation against the illegal activity, then it is stated that most of the applicants including the ladies were put in Police van and kept behind the bars in CIDCO Police Station. Here, the petitioners have not stated as to whether any offence came to be registered against them in respect of said incident. If the offence was registered and in connection with

the same they were taken in custody, then it will not be automatic illegal detention. Reference has also been made in respect of *status quo* order passed by this Court in second appeal. Even at that time the petitioners could have pointed out the alleged illegal activities. In fact, the said second appeal appears to have been filed by Agricultural Produce Market Committee against the original petitioner Tanaji Premraj Gunjal. The present legal representatives were also party to the second appeal. There is also a fact on record that is certificate issued by Land Acquisition Officer regarding the acquisition of the land and, therefore, it appears that the *status quo* order was passed. Now, if there was resistance by petitioners, it would be a disputed question of fact, as to whether they had the right to resist and when according to petitioners themselves that there are some orders in their favour, but they have not gone for the execution thereof. All these activities cannot be considered in a Criminal Writ Petition by exercising powers under Article 226 and 227 of the Constitution of India. Therefore, we do not want to keep the matter lingering further and even the learned Advocate for petitioners is absent without assigning any reason. Hence, writ petition stands dismissed.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)