



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

944 WRIT PETITION NO. 1108 OF 2024

Govindprasad Shrigopal Mundada

....Petitioner

VERSUS

The State of Maharashtra
Through The Superintendent Of Police
& others

.....Respondents

.....

Mr. C. D. Biradar, Advocate for the Petitioner.

Mr. N. D. Raje, AGP for the State.

Mr. K. S. Solanke, Advocate for Respondent No. 4.

Mr. A. R. Lukhe, Advocate for Respondent No. 5.

CORAM : R. M. JOSHI, J.

DATE : 14th JANUARY, 2025.

PER COURT :

1. This Petition challenges the order passed by the Trial Court rejecting application Exhibit 29 for providing police protection in order to fence the suit property.

2. It is the case of the Petitioner/original Complainant in Regular Civil Suit No. 194/2022 that an order is passed in MCA No. 38/2020 whereby Exhibit 4 filed in the original proceeding came to be allowed. By passing said order, Defendants were restrained from

causing interference into peaceful possession of Plaintiff over suit property. They were further restrained from creating third party interest in the suit property.

3. By taking advantage of this order, an application is moved by the Petitioner/original Plaintiff before the Trial Court seeking police protection for permitting him to fence the suit property. Perusal of the application Exhibit 29 indicates that this is not for the first time that an attempt is made by the Plaintiff to seek police protection in this regard. There is a specific pleading in application Exhibit 29 to the effect that the even before filing of the suit attempts were made by the Plaintiff to seek police protection and it was not granted.

4. Learned counsel for the Petitioner submits that since there is order passed by the District Court allowing application Exhibit 29 granting injunction against Respondents, there is no impediment in granting police protection for fencing of the suit property. It is his submission that the Plaintiff is within his right to protect his property.

5. The law on the point of providing police protection in civil dispute is fairly settled to say that in an exceptional case it is to be granted and not to be granted as a matter of course. It is pertinent to note that herein the Plaintiff has never approached to the Civil Court with a relief to restrain Defendants from causing interference in fencing of the property and for that purpose no injunction was sought. Undeniably, there is dispute about boundaries between Plaintiff and Defendants. This Court finds substance in the contention of learned counsel for the Respondent that the Plaintiff is trying to take disadvantage of the order passed below Exhibit 5 and is seeking police protection in order to carry out fencing to his property.

6. When there is dispute between parties about boundaries and as Plaintiff has not claimed any injunction against Defendants about restraining them from causing interference in fencing of the property, police protection can not be sought for the purpose of erecting fence. It is always open for the Plaintiff to move appropriate application before the Civil Court. He does not do so. He tries to take disadvantage of order passed below Exhibit 5 in order to seek extra ordinary relief of police protection. In the circumstances this

Court finds that making application before the Trial Court as well as filing of the Petition before this Court for seeking police protection is nothing but abuse of process of law.

7. As a result, Petition is dismissed with cost of Rs. 20,000/- payable to Government Cancer Hospital, Aurangabad.

(R. M. JOSHI)
Judge

dyb