

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.553/2025

(M/s. Tirupati Developers thr. partners Vs. Shri Dhruvdas s/o Jakoba Karade & ors.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. P.V. Vaidya, Advocate for petitioners.
 Mr. S.P. Sonowne, Advocate for respondent Nos. 1 to 6.
 Mr. Lule, APP for respondent Nos. 7 & 8.

CORAM: ANIL L. PANSARE AND
M. M. NERLIKAR, JJ.
DATED : 05/08/2025.

Heard.

2. Learned counsel appearing for respondent Nos. 1 to 6 submits that the petitioner has an alternate and efficacious remedy under Section 397 of the Code of Criminal Procedure ("Code").

3. Learned counsel for petitioner however has invited our attention to the order dated 10.01.2024 passed by respondent No.7. By the said order, the respondent No.7 has declared that the respondent Nos. 1 to 6 herein are in possession of the property bearing Survey Nos. 77/3 and 77/1. The respondent No.7 has further enjoined the petitioner from disturbing the possession of respondent Nos. 1 to 6 and to not encroach upon the land.

The learned counsel submits that the petitioner has not challenged the said order and therefore, there is no question of having alternate and efficacious remedy under Section 397 of the Code. What is challenged is the communication dated 04.06.2025 issued by respondent No.8 calling upon the petitioner to remove encroachment.

4. The argument is that the order passed by respondent No.7 discloses no encroachment by the petitioner and therefore, the question of removing encroachment by the petitioner is beyond what has been ordered by respondent No.7.

5. Learned counsel for respondent Nos. 1 to 6 submits that though in the operative part of the order dated 10.01.2024 there is no reference to encroachment made by the petitioner, in the body of the order, respondent No.7 has noted such encroachment. Accordingly, he made an attempt to justify the communication.

6. We are not impressed with the submissions made by the respondents inasmuch as the operative part of the order is something that can be executed. Since there is nothing in the operative part of the order as regards encroachment made by the petitioner, there is no question of removal of such encroachment at the hands of respondent No.8. The communication is contrary to the order passed by respondent No.7 and is accordingly declared as illegal, as prayed for.

7. The petition stands disposed of in above terms.

(M. M. NERLIKAR, J.)

(ANIL L. PANSARE, J.)