



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

CRIMINAL WRIT PETITION NO. 46 OF 2023

Shankar S/O Chinduji Bhoyar Vs Adani Transmission Raipur And Another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. P.D. Sharma, counsel for petitioner.

Mr. Nikhil Kirtane, counsel for respondent No.1.

Mr. M.J.Khan, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 23/01/2025.

1. By this petition, the petitioner has challenged the order passed by the learned District Judge-II and Additional Sessions Judge, Hinganghat, dated 29/09/2022, rejecting the prayer of the petitioner, which is claimed under the provision of Section 133 of Code of Criminal Procedure, 1973.

2. As per the contention of the petitioner, he is the owner and possessor of the land situated at Mouja Ganapur (Karul), Tah. Samudrapur District Wardha, bearing survey No. 126, having an area of 1.61 H, which was irrigated from the water of the Well. The petitioner had planted 2100 plants of Nilgiri trees in 1 hector of his field. The petitioner has learnt during the course of the impugned proceedings that the Central Electricity Authority (CEA), Ministry of Power, Government of India, has issued the respective approval for the development of the said project. The land of the said project is passing

through Chandrapur, Wardha, Gondia, and Gadchiroli Districts of Maharashtra State. The respondent No. 1 also communicated with the Tahsildar, Samudrapur, and the Sub-Divisional Officer, Samudrapur for seeking permission of removal of Nilgiri trees from the agricultural land of the petitioner. As per the request of the respondent No. 1, Tahsildar, Samudrapur had issued a letter to the petitioner and the respondent No. 1 to be present at his house. There was communication between the Tahsildar and the Talathi, also directing him to conduct the inquiry at Survey No. 126. The Talathi, Sawalgaon has submitted his report and directed the Taluka Agricultural Officer to submit the information sought by the Tahsildar Samudrapur. The Tahsildar Samudrapur was seeking information regarding the valuation of the Nilgiri trees of the petitioner, but it was informed that it cannot be provided because the concerned department of the Taluka Agricultural Officer only deals with and can only provide the valuation of fruit-bearing trees. Thereafter, the respondent No. 1 requested the Forest Department to provide the information about the expenditure incurred by the petitioner on 1070 Nilgiri trees right from the plantation till today. The petitioner issued a legal notice to the respondent No. 1 seeking the compensation of Rs. 37,10,000/-. The hearing of the application filed by the respondent No. 1 was conducted before Tahsildar Samudrapur, and the petitioner, after giving his appearance, had refused to accept the meager compensation with the respondent No. 1 was provided.

3. It is alleged that the learned Tahsildar Samudrapur, instead of deciding the matter judicially, stepped into the shoes of respondent no. 1 and wrote a letter to the respondent no. 2 on behalf of the respondent no. 1 seeking permission for cutting the Nilgiri trees from the field of the petitioner. The respondent No. 2 wrote a letter to Built Graphic Paper Product Limited, Ballarpur, directing them to inform the present market rate of the Nilgiri Trees to the respondent No. 2, and thereafter, the rate was informed as Rs. 4000 to 60,000/- per metric ton. Thus, the respondent No. 2, by conducting the inquiry, passed the impugned order by allowing the respondent No. 1 to remove the 1100 Nilgiri trees from the tree of the petitioner, which were in the survey number. The same order was challenged by the petitioner before the learned District Judge-2 and Additional Sessions Judge, Hinganghat. The said revision came to be rejected, and therefore this writ petition was filed.

4. Learned APP submitted that the question arises that though the present writ petition is of the nature of civil proceedings. The petitioner has filed the present writ petition in the nature of a criminal writ petition, and in view of the judgment of the Division Bench of this court in the case of *M/S. Nagpur Cable Operators' Association vs Commissioner Of Police, Nagpur And another [AIR 1996 BOM 180]*, it should be decided by the Division Bench.

5. He has further pointed out from the para-21, wherein the Division Bench of this Court has extensively dealt with this issue and observed as under;

In the light of the aforesaid legal position explaining the nature of proceedings under Article 226 of the Constitution, and the classification whether the said proceeding is civil or criminal, when the provisions of the Appellate Side Rules are looked into, it would be found that all applications under Article 227 of the Constitution challenging the orders and decisions of the Courts constituted under the Criminal Procedure Code are dealt with on the side of criminal business of the Appellate Side of this Court, but the said clause (i) of Part II, Criminal of Rule 2 of Chapter I is not all exhaustive. Rule 2-B of Chapter I, as observed above, states that all petitions/applications under Article 226/227 of the Constitution arising out of or relating to the order of penalty or confiscation or an order in the nature thereof or an order otherwise of penal character and passed under any Special Statute shall be heard and decided by the Division Bench hearing writ petitions. This rule only allocates that the class of petitions/applications under Articles 226 and/or 227 of the Constitution of India mentioned in Rule 2-B shall be decided by the Division Bench hearing writ petitions, but does not classify the nature of proceedings whether the said writ petitions/applications shall be criminal or civil writ petitions.

6. In para-22 also, the division bench has directed to Registrar (Appellate Side), the High Court of Judicature at Bombay to take steps in implementing the following directions immediately;

- (i) Every petition/application under Articles 226 and 227 of the Constitution of India should be styled as 'Civil Writ Petition' or 'Criminal Writ Petition', as the case may be.*
- (ii) Every petition/ application under Articles 226/227 of the Constitution of India presented through the Counsel or where such petition/application is presented in person, should be accompanied by the Certificate of the counsel or petitioner in person, as the case may be, that such petition/application is 'Criminal Writ Petition' or 'Civil Writ Petition'.*
- (iii) The Registry should examine such writ petition filed under Articles 226 and 227 of the Constitution of India styled as "Civil Writ Petition" or "Criminal Writ Petition" by finding out the nature of the relief/reliefs claimed in such writ petition and the grounds of such relief/ reliefs and if the Registry finds that the writ petition has been wrongly styled, such objection must be raised.*
- (iv) Civil Writ Petitions should be registered by the office in the separate Register under the title, "Civil Writ Petitions under Articles 226 and 227 of the Constitution of India." Expression 'Special Civil Applications' occurring in clause (vi) of Rule 10 of Chapter V of Appellate Side Rules be read as 'Civil Writ Petitions'. This is so done to continue with the existing practice since 1980.*
- (v) Criminal Writ Petitions should be registered under the separate head in Register maintained by the office bearing the title, "Applications under the Constitution" under Chapter XXVI, Rule 4(6) of Appellate Side Rules.*

7. In the concluding paragraph, i.e. para-25, it is observed by the Division Bench that the question arises that though the present writ petition is of the nature of

civil proceedings, the petitioner has filed the present writ petition as Criminal Writ Petition, and in this view of the matter, after holding that the present Criminal Writ Petition is not properly styled and maintainable. As such, whether this Criminal Writ Petition should be rejected at its threshold or not. The procedure is always the handmaid of justice and not its master, and because of the mistake committed by the counsel in filing the present criminal writ petition, the litigant should not be allowed to suffer, and in our view, the interest of justice would be met if the petitioner is permitted to convert this criminal writ petition as civil writ petition. Necessary amendment should be carried out by the petitioner within two weeks from today, and in case the amendment is carried out within two weeks, the Registry is directed to register this writ petition as Civil Writ Petition and place it before the appropriate Bench for consideration.

8. In the light of the above observations of the Division Bench, which shows that the petitioner is seeking direction to the respondent No. 1 to pay the compensation of Rs. 32,10,000/- as compensation towards the cutting of 1100 Nilgiri trees as per the market value of Rs. 3000/- per tree.

He is also seeking the writ in the nature and asking for the directions to call record and proceedings for respondent No. 2, learned Additional Sessions Judge,

Hinganghat, after perusing the record, quash and set aside the impugned order.

He has also claimed the relief of compensation towards the construction of Rs. 5,00,000/-.

9. Thus, the prayers of the writ petition show the nature of the dispute is of civil nature, whether the proceedings were lying under Section 133 of Cr.P.C. or not, and whether the petitioner is entitled for any compensation is to be decided by the Division Bench in the light of the decision of this Court in the case of *M/S. Nagpur Cable Operators' Association .vs. Commissioner Of Police, Nagpur And another* referred (supra).

10. In view of the above facts and circumstances, the Registrar (Judicial) to place it before the appropriate bench for the final disposal.

[URMILA JOSHI-PHALKE, J.]