



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3411 OF 2025

Sachin Govindrao Sarkale

VERSUS

Gitabai Abasaheb Gore And Others.

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Advocate for Petitioner : Mr. S.A. Deshpande

Advocate for Respondents No.1 to 3 : Mr. M. P. Kale

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 31, 2025

FINAL ORDER :-

1. Present writ petition takes exception to the order dated 30.11.2024 passed by the learned Civil Judge Senior Division, Parbhani below Exhibit-25 in Regular Civil Suit No.4 of 2024, whereby petitioner's prayer to grant police protection has been declined.

2. The petitioner is plaintiff in Regular Civil Suit No.4 of 2024. He instituted the suit for perpetual injunction against respondents in respect of plot No.22/C (old plot no.15), which is part of Survey No.275. According to petitioner, respondents/defendants had filed R.C.S. No.229 of 2023 seeking decree of perpetual injunction in respect of the suit property. His application for temporary injunction has been

rejected by the Trial Court. At the same time, Trial Court allowed application below Exhibit-5 in R.C.S. No.4 of 2024 and restrained the defendants/respondents from interfering in peaceful possession of plaintiff over suit property. According to petitioner, he has initiated construction of the building over suit property, for which Municipal Corporation has accorded construction permission.

3. In wake of injunction order operating against respondents, petitioner's possession was disturbed. The plaintiff contends that he made complaints to police and also sought police protection, however, no action is taken. In this background, petitioner filed an application below Exhibit 25 in R.C.S. No.4 of 2024 seeking directions against Police Station Officer, New Mondha to provide police assistance to the plaintiff for implementation of the order of Temporary injunction. It was specifically brought to the notice of Trial Court that defendants are continuously giving threats to disturb possession of petitioner and also obstructing construction activity. Petitioner has apprehension of violence against them while he is protecting his possession and property. Learned Trial Court vide impugned order dated

30.11.2024 rejected petitioner's application for police aid. Hence, this writ petition.

4. Mr. S.A. Deshpande, learned advocate appearing for petitioner vehemently submits that order of temporary injunction is granted by Trial Court protecting petitioner's possession over the suit property, which is subsisting till this date. Similarly, claim of defendants regarding possession over the suit property has been considered and rejected by the Trial Court. Respondents are brazenly breaching injunction order and causing disturbances to ongoing construction on the suit property by every possible means. He would therefore urge that there is grave emergency to grant police-aid to maintain sanctity of the injunction order, possession and peaceful enjoyment of the property by plaintiff. Relying upon various pronouncements by this Court, he would urge that order of police-aid may be granted in petitioner's favour and his application Exhibit-25 may be allowed.

5. Per contra, Mr M.P. Kale, learned advocate appearing for respondents submits that order granting temporary injunction in favour of petitioner is assailed before learned District Judge in Misc. Civil Appeal. The appeal is

pending till this date. He would submit that petitioner has continued construction over suit property. According to Mr. Kale, in case of breach of injunction order, petitioner has remedy under Order XXXIX Rule 2A of the Civil Procedure Code (for short Code), however, he is trying to take police-aid for obvious reasons.

6. Having considered the submissions advanced, it can be observed that petitioner has instituted R.C.S. No.4 of 2024, seeking the decree of permanent injunction in respect of the plot no.22/C, admeasuring 153.23 square meters, which is part of Survey No.275 within the limits of Municipal Corporation, Parbhani. The plaintiff claimed that he became owner of the said property on the basis of sale-deed dated 15.6.2005 executed by the original owner. Name of the petitioner is mutated in record of rights. Municipal Corporation, Parbhani has granted construction permission dated 1.2.2023. Petitioner started construction in pursuance to such permission. Since plaintiff was obstructed by defendants, he instituted suit along-with an application Exhibit-5 for grant of temporary injunction. Trial Court allowed the application Exhibit-5 and injuncted respondents/defendants from interfering in possession of petitioner/plaintiff. Since

petitioner is facing obstruction at the hands of defendants, he filed an application for police-aid dated 20.1.2024 but same has been rejected giving reason that dispute between parties is subjudiced before Civil Court.

7. Law on the point of granting police protection for implementation of injunction order has been crystallized by this Court in case of **Nirabai J. Patil Vs. Narayan D. Patil reported in 2004 (3) Bom.C.R. 226**, wherein following observations are made :-

“7. The aforesaid observations made by the learned Single Judge of this Court are very relevant for the present case. If Civil Court which has passed the order of temporary injunction takes a view that there is no power vested in the Court to direct the police to grant assistance for enforcing or for implementation of the order of temporary injunction, the very purpose of granting order of temporary injunction may be trust rated in a given case. It is the duty of every police Officer to enforce the law of the land. The duties of police officers are reflected in [Section 64](#) and [Section 66](#) of the Bombay Police Act, 1951. In my opinion, the view taken by the learned Trial Judge that "There is no provision for police and for execution of interim order, is totally incorrect. The learned Judge failed to appreciate that he has a power under [Section 151](#) of the said Code to pass the order directing that police help should be made available provided facts of the case warrant passing of such order.

8. As observed by this Court in the aforesaid judgment, the grant of police aid is an extreme step and therefore order for grant of police help or police assistance cannot be made unless the Court is fully convinced about the existence of grave emergency such as apprehension of violence by the persons against whom the order has been passed. It is very difficult to give exhaustive list of circumstances in which the Court can exercise the said power. However, said power is to be exercised with caution and the said power can be exercised only after the Court is fully convinced of existence of grave situation warranting exercise of said power.”

8. In the present case, it can be observed that plaintiff and defendants both are litigating in respect of suit property since before institution of the suit. Police complaints are made by petitioner against defendants, on the basis of which, criminal cases have been registered. Thereafter, petitioner filed civil suit alongwith an application for injunction and the same has been allowed. Looking to conduct of defendants/respondents and their aggression to disturb possession of petitioner, petitioner has made representation to police to grant police protection, however, it has been declined on the ground that civil dispute is pending between the parties. In this case, there is sufficient material to show possibility of incidents of violence, if police-aid is not provided. Therefore,

exercise of powers conferred under section 151 of the Civil Procedure Code is imperative to protect sanctity of injunction order passed by the Court. The Court need not wait till some unwanted incident is happened. Once there is sufficient material to infer reasonable apprehension of violence, the order of police protection can be passed.

9. Although, Mr. Kale contends that the remedy under Order 39 Rule 2-A of the Code is available in case of breach of injunction, such remedy can be exhausted to punish respondents for breach of injunction, however, when there is persistent threats of breach of injunction, emergent powers can be exercised under section 151 of Code. Therefore, in appropriate cases, although, penal provisions under Order 39 Rule 2-A is available, it is the duty of the Court to see that majesty of it's order granting temporary injunction is maintained and all the concerned obeys such order. In case of persistent threat of default, Court need not hesitate to exercise the powers under section 151 of the Code and issue necessary directions to the Authorities to grant aid for implementation and enforcement of the injunction order.

10. The impugned order suggests that the Court refused to entertain prayer for grant of police protection on the ground that petitioner filed police complaint on 20.1.2024 and application was presented in July, 2024. However, Trial Court ignored that after exhausting all possibility to get support from the police authorities, application was filed and merely because remedy under Order 39 Rule 2A is available, Court cannot refuse to exercise the jurisdiction under section 151 of the Code.

11. In the result, Writ Petition is **allowed** in terms of prayer clause “C” and disposed of. Petitioner shall deposit necessary Bhatta/charges for police protection. The Superintendent of Police, Parbhani shall provide Assistance of requisite police protection initially for a period of seven (7) days. In case, emergent situation persists, petitioner shall be at liberty to file an application to the Trial Court for extension of police protection beyond seven days.

(S. G. CHAPALGAONKAR)
Judge

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