

ORDER BELOW EXHIBIT NO.01
(Dated: 21.11.2024)

By way of this application, the applicant has prayed for giving directions under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 to Police Station, Deoli, Tahsil- Deoli, District- Wardha for registration of First Information Report against the accused Nos.1 to 05 for the offences punishable under Section 61, 316(2), 318(3), 324(4)(5), 329(3) read with section 351 (2)(3) of the Bharatiya Nyaya Sanhita, 2023 or for any other offences , as may be found to be made out against the accused Nos.1 to 5 and to investigate it or to try and entertain complaint by taking cognizance of the offences punishable under Section 61, 316(2), 318(3), 324(4)(5), 329(3) read with section 351 (2)(3) of the Bharatiya Nyaya Sanhita, 2023.

2] Heard learned advocate for the applicant. Perused the application filed alongwith the affidavit of the applicant and documents on record. I have also called report from the concerned police Station Officer as per provision of Section 175(3) of the Bhartiya Nyaya Sanhita. But despite of ample opportunities, the concerned Police Station failed to file report on record.

3] It is alleged by the applicant that the father of the applicant namely deceased Balwant Haribhau Shende died on 05.01.2020 and the mother of the applicant namely deceased Smita Balwant Shende died on 23.12.2019. On 11.04.1993 vide document bearing no. 378/93 and on 30.04.1993 vide document bearing no.222/93, the deceased father and

mother of the applicant respectively had purchased a land from one Laxman Ladekar on sale deed in respect of the landed property bearing survey no.378 admeasuring area 12.90 acre (5.16 H.R.) which is registered before the office of Sub-Registrar, Pulgaon, Tahsil-Pulgaon, District-Wardha and since the execution of registered sale deed, the father and mother of the complainant was in possession of the survey no.378. The registered sale deed dated 11.04.1993 and 30.04.1993 respectively bears the signature and the thumb impression of the proposed accused no. 01, 02 and 03.

4] It is further alleged in the application that in the year 2002, original owner of the property namely Laxman Ladekar had filed the application before the Sub-Divisional Officer, Wardha vide RTS No.64/10/2001-02 against the proposed accused no.1 and thereby took objection for mutation of the property of the Laxman Ladekar including survey no.378 (property purchased by the father and the mother of the applicant) in the name of the proposed accused no.01 as proposed accused no.01 has fraudulently tried to mutate his name on the property of Laxman Ladekar as the owner during his lifetime.

5] It is further alleged in the application that due to the pendency of the above-mentioned application, the deceased father and mother of the applicant could not mutate their property in their name. After the date of passing the order in the above-mentioned application, Laxman Ladekar died within weeks. Thereafter, due to unavoidable and technical problems the name of the deceased father and mother of the applicant was never mutated in their lifetime.

6] It is further alleged in the application that in the year, 2012 one Dadarao Jabade claiming to be one of the close relatives of Late Laxman Ladekar had filed a suit bearing Regular Civil Suit No. 368/2012 against the proposed accused no.01 and also against the mother and father of the applicant which is pending before the Court of Honourable Civil Judge Senior Division, Wardha. After demise of the father and the mother of the applicant, the names of the applicant and other legal heirs that is Vidya Durgeshwar Hatwar, the applicant Sushma Vitthal Ugemuge and Jyotsna Vinay Kadam are encrypted on the record of Regular Civil Suit No.368/2012 as legal heirs.

7] It is further alleged in the application that in the year 2017, the father and the mother of the applicant came to know that survey no.378 had been surveyed by the Small-Scale Industry and the competent authority has decided to acquire it and in return, the competent authority is going to release sum amount to a beneficiary. Therefore, deceased father and the mother of the applicant through a written letter sent to the Competent authority raised objection for disbursement of the amount or for releasing any government funds in favour of anybody claiming to be the owner of the property and also mentioned the reason for not mutating the names of the father and the mother of the applicant. But, as per order dated 01.11.2021, the competent authority had released the funds in favour of the proposed accused no.01. Thereafter, Land Acquisition Officer (Manojkumar Khainar), General, Wardha has released the funds in favour of proposed accused no.01.

8] It is further alleged in the application that on 05.12.2023, the applicant and legal heirs had made written complaint before Police station, Deoli, Tahsil-Deoli, District-Wardha and on 13.03.2024, to the Superintendent of Police, Wardha and on 18.03.2024, to the Police head Quarter, Mumbai and thereby they informed to the concern authority about the aforementioned past happening. But the police Authority failed to register crime against proposed accused and investigate into matter, despite it is seen from the facts and circumstances that fraud has been committed by the accused by receiving amount of compensation released by Land Acquisition Officer namely Manojkumar Khainar, General, Wardha, knowing the facts that by virtue of sale deed the father and mother of the applicant is the owner of field survey no.378 and being the owner of survey No.378, the father and mother of the applicant are entitled to receive compensation amount. Therefore, the complainant is constrained to file this application.

9] In support of the application, the applicant has filed on record vide list of documents below Exhibit No.04, a xerox copy of her Aadhar card, a xerox copy of written complaint sent to the Police Station, Deoli, Tahsil- Deoli and District- Wardha, a xerox copy of written complaint sent to the Superintendence of Police, Wardha, a xerox copy of written complaint sent at the Police Head Quarter, Mumbai and a xerox copy of order dated 24.09.2002 passed by the Sub-Divisional Officer, Wardha, a xerox copy of objection dated 07.12.2015 filed by her mother Smita Shende before Sub-Divisional Engineer, Small irrigation Exploration, Wardha and a xerox copy of objection dated 07.12.2015 filed by her father Balwant Haribhau Shende before Sub-Divisional Engineer, Small irrigation Exploration, Wardha.

10] On 17.08.2024, the applicant filed on record a copy of Final Select statement as document no.05 and a copy of 7/12 extract of the field Survey no. 378 as document no.06. Perusal of it shows that 7/12 extract of the field Survey No.378 bears the names of the proposed accused Nos.1,02 and 03 as co-owner of the field survey no.378 and the land Acquisition Officer released compensation amount of Rs.48,80,048/- in favour of the proposed accused no.01 being the owner of the field Survey No.378.

11] I have perused the record of the case. On perusal of the record of the case, it is seen that the application is supported by the affidavit of the applicant and before filing the present application, the applicant duly complied with the provisions of Section 173(1) and Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

12] Now, it has to be seen that whether the proposed accused have committed cognizable offence as alleged by the applicant or not. In the present application, it is the allegations of the applicant that by virtue of the sale deed bearing document bearing Nos.378/93 and 222/93, the deceased father and mother of the applicant respectively had purchased the field survey no.378 and sale deed bears the names, thumb impression and signature of the proposed accused Nos.1 to 3, but till date no mutation has been entered in their names. The proposed accused are having knowing of the said facts but despite of that they committed fraud by receiving the amount of compensation released by the Land Acquisition Officer for acquiring field survey No.378. Therefore, the proposed accused have committed offence as alleged by the applicant in the application.

13] But, perusal of record shows that the applicant failed to file on record any other documents showing that the proposed accused is having knowledge of execution of sale deed or any documents showing that the proposed accused has executed sale deed in favour of the father and the mother of the applicant or copies of the sale deed by virtue of it the father and the mother of the applicant becomes the owner of the field Survey No.378 and which bears the names, thumb impression or signature of the proposed accused Nos. 1 to 3.

14] On the contrary, it is seen from the record that Land Acquisition Officer released the amount of compensation to the proposed accused as the names of the proposed accused are shown on 7/12 extract or on other documents of the field survey No.378 as owner of the field survey No.378. Perusal of record does not show that the proposed accused have prepared false and fabricated document in order to receive compensation amount and thereby committed fraud with the applicant, revenue department and to the Land Acquisition officer and compel them to release the amount of compensation in his favour.

15] On the other hands, it is prima-facie seen from the record of the case that even after execution of registered sale deed that is since the year 1993, the father and mother of the applicant failed to mutate their names on the record of field survey No.378. Even in the year 2002, the Sub-Divisional officer, Wardha passed the order of cancellation of the mutation entry No.621 and to enter the name of Laxman Ladekar as the owner of the Survey No.378, but thereafter also the father, mother and the applicant failed to mutate their names in the record of field Survey No.378 or also failed to file any suit regarding declaration of ownership

of field survey No.378. Thereafter also when the Land Acquisition Authority failed to refer their objection to the competent court at that time also the applicant or her father or mother failed to approach to the higher authority of the Land Acquisition Officer and also failed to file suit in that regard. It is the duty of the father and mother of the applicant and of the applicant to mutate their name on the record of the field survey No.378 on the basis of registered sale deed but they failed to do it since the year 1993 till date.

16] It is also seen from the record of the case that already Regular Civil Suit No.368/2012 is pending in the Court of Honorable Civil Judge Senior Division, Wardha in which the question of ownership of the field Survey No.378 is involved and alleged dispute between the applicant and the proposed accused Nos.1 to 3 is about the correction of the mutation entries or of taking the new mutation entries on the record of the field survey No.378. Hence, it is a dispute of a civil nature. As it is a civil dispute, the applicant can get relief by instituting the civil suit or by adopting any civil remedies. Hence, direction under section 175(3) of the Bharatiya Nagarik Suraksha Sanhita cannot be given. Consequently, I pass the following order.

O R D E R

The application is rejected.

Date : 21/11/2024.

[T.A. Bhoyar]
Judicial Magistrate, First Class,
(Court No.4), Wardha.