

## MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/10/2009/ 2736

Date: 6 October 2009

### Case No. - 3353/2004-05

Name of the Complainant : Jitendra Avahad  
5, Ashtavinayak Krupa  
Swarup Enclave, Bhaktimandir Road  
Pachpakhadi  
Thane (W) - 400 602.

Krishna Lakhma Pathara  
R/c. Yeour Gaon, Patona Pada  
Pokhran Road No.1,  
Tal Dist Thane.

Vs.

The Collector  
Thane

The Station Officer  
Police Station Yeour  
Thane.

Date : 25 September 2009

Coram : Justice V G Munshi, Member

### ORDER

Read the averments made in the complaint and report received from the Respondent. Read the case papers. Heard the parties.

2. Before proceeding with the merits of the case, points to be decided etc it is necessary to acquaint ourselves with the facts and the circumstances brought on record.

3. The land Gat No. 12/2 situated in village Yeour Tal. Thane was notified under Section 36 A and 36 of the Maharashtra Land Revenue Code. This land in dispute stood in Revenue records in the name of complainant's grandfather Kakdya Navsya Pathara and thereafter in the name of complainant's father Lakhana Kakdya Pathara, who expired on 10.2.2002. The name of Lakhma Pathara was



occupant / tenant on that particular date i.e. 01.04.1957. The complainant that on 29.08.2003 made application to Talathi Yeour for entering the names of legal representatives, in 7/12 extract in places of deceased tenant Lakhma Pathara.

4. The complainant made following allegations in this matter.

- (i) **Firstly**, the Talathi of Pachpakhadi (Yeour) did not take any action on the application made by the complainant for bringing legal representatives on record.
- (ii) **Secondly**, Talathi S L Patil of this area is working in Thane Tahsil for last more than 25 years, made huge corruption, collected huge property and caused great nuisance and harassment to poor farmers.
- (iii) **Thirdly**, he always helped rich persons and collected money, and Revenue Officers did not take any action.
- (iv) **Fourthly**, he joined hands with Builders and other persons and also helped Kamlesh Thakur and Pradeep Soda.
- (v) **Fifthly**, he by going out of way and by making corruption, helped Kamlesh Thakur and Pradeep Soda and tried to dispossess the complainant of the land in dispute, by making wrong entries in Revenue record or by cancelling the entry of the complainant etc.
- (vi) **Sixthly**, the Talathi and these persons, in collusion harassed the complainant, implicated him in false case and put him behind the bars and thus, made his life miserable. The complainant and his family members apprehend danger to their life and persons at the hands of these persons and sought protection.

The complainant made similar complaints to Collector, Thane or in Police Station. When he could not get relief, he moved the Commission for necessary action in this matter.

5. The Respondent Tahsildar, Thane by filing their reply denied and disputed all the allegations made against them in the complaint.

6. Complainant Krishna Lakhma Pathara expired on 17.12.2005. Smt. Sunita Krishna Pathara (wife) moved application dated 16.03.2009 supported by death certificate for bringing her name on record as legal representative of deceased husband. This application was allowed and her name was brought on record as legal representative of the deceased complainant.



R/R,HRG -RECOMM.

7. Therefore, it is necessary to view the case of the complainant in the light of facts and circumstances brought on record and also in the light of legal position.

(i) The Sub-Divisional Officer Thane did pass order on 14.05.2004 and deleted the name of Lakhma Pathara from crops statement (7/12). The complainant challenged all these orders passed by Revenue Authority before Commission. The legality, proprietary or correctness of these orders cannot be challenged before Commission in view of clause 8(h) and 8 (i) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993. In other words, the Commission cannot decide this issue in view of clause 8 (k) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993.

(ii) The complainant by filing rejoinder dated 23.03.2009 made following prayers and they are reproduced as under.

- (1) The suit land bearing surveyNo. 12/2 and admeasuring 5H-20R-8P belongs to the tribal in the capacity as a tenant on 01.04.1957, directions be given to the Collector and Sub Divisional Officer Thane that the aforesaid land be restored to the heirs of late Shri Lakhma Kakdya Pathara and same may be mutated in the 7/12 extract of the land bearing survey no. 12/2.
- (2) The possession of the said landed property bearing survey No. 12/2 be handed over to the complainant under Police protection.....”

There cannot be any difference of the opinion on the point that the dispute that arose among the parties is of civil nature and it is to be heard and decided by the competent Court / Civil Court as the case may be and not by the Commission. In other words the Commission in such matter cannot go so deep into the merits of the case, and record findings or order on such



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issues of civil nature and that too without jurisdiction. In that case it is incumbent upon the complainant to select and avail proper remedy available under law.

The Division Bench of High Court Bombay in

A I R 2006 Bombay 44,

(State of Maharashtra Vs Sou Shobha Vitthal Kolte)

held that,

“Once a petitioner comes before Commission complaining of violation of human rights based on the right created under a statute and the statute itself provides a mechanism for redressal by way of appeal, revision or otherwise, the Commission ordinarily should not entertain a complaint and direct the parties to pursue their remedy under the statute.”

In view of the principle laid down in the decision referred to above, the complainant has to pursue proper remedy. The Commission cannot entertain such matter.

- (iii) The complainant is a tribal Adivasi. According to him great injustice has been caused to him by the Talathi, by his illegal activities and by joining hands with other sides. The complainant made serious allegations against complaint of corruption, malpractices etc. It was further alleged that this Talathi continuously worked in that area for a period of more than 25 years and illegally collected huge property. In the last, the complainant has come with a case that the Talathi had given false reports and therefore, their names were deleted from the crops statement. The Maharashtra Restoration of lands to Scheduled Tribes Act was enacted in the year 1974 which empowered the Government to take over land and to re-allot it to Adivasis. By this Act of 1974, responsibility was kept on Collector of the District to protect the interest of such Adivasis. If any person deliberately or with malafide intention and motive acts against the interest of these tribals or Adivasis, then such thing must be viewed seriously. It is incumbent upon the Collector, Thane to see that these persons from Scheduled Tribes do not get any nuisance or harassment etc at the hands of Talathi



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or other Revenue Officers or officials, and no such event is repeated in future.

- (iv) From the averments made in the complaint it is seen that this Talathi taken law in his hands. He always harassed and troubled the complainant and made his life miserable. The complainant apprehended danger to his life and person at the hands of Talathi. It was his grievance that though he made complaints in Police Station, Police did not take any action. It is incumbent upon the Station Officer, Police Station Yeour to keep close watch on the situation and see that peace law and order is maintained and the complainant and his family members do not get any harassment of nuisance from the said Talathi and other persons.

In view of this situation and legal position it is necessary to make following recommendations in this matter.

- (A) The Collector, Thane either himself or through any Senior Revenue Officer, to hold inquiry against Talathi of Pachpakhadi (Yeour) S L Patil in view of the observations made in this order and to take action, if any, according to law.
- (B) Station Officer, Police Station Yeour Dist. Thane to see that the complainant and their family members do not get any harassment or nuisance at the hands of Talathi and other persons and peace law and order is maintained.
- (C) Copy of this order by sent to Collector, (Thane) and Station Officer Police Station Yeour through Secretary, State Human Rights Commission, Mumbai for information and necessary action under intimation to the Commission.

With these recommendations Case No. 3353/2004-05 is disposed of accordingly.



(Justice V G Munshi)  
Member, SHRC