

## MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/09/2009/ 546

### **Case No. – 648/2006-07**

Name of the Complainant : Sushila Ashok Shivankar  
At Kumbhartola, PO Shirpur  
Tal Deori, Dist Gondiya

Vs.

The Superintendent of Police  
Gondiya (Rural)

Date : 4 February 2009

Coram : **Justice V G Munshi, Member**

### **ORDER**

Read the allegations made in the complaint and report received from the Superintendent of Police, Gondiya and Investigation Wing of the Commission. Read the case papers.

2. The important facts of the case of the complainant may be briefly stated as under.

The complainant is resident of village Kumbhartala, Tal. Devari. The house property in dispute was of the ownership of one Bhudha Doye. He got three daughters and their names are Sumitrabai (mother-in-law of the complainant), Mantharabai Wadhai (Respondent No.2) and Parvatibai Hukare. The daughters occupied different portions from the said house. Ashok Shivankar is the husband of the complainant. She resided in this house, after death of her husband Ashok and his parents. Respondent



No.2 Mantharabai and her husband Respondent no.1 Tulshiram came in village Kumbhartola, repaired their part in the said house and started residing there. The complainant and Parvatibai advised the Respondent Mantharabai, that there should be partition of the house property and then she should repair the property. The Respondents, even thereafter repaired the portion of house in their possession. Therefore, quarrels always taken place among the parties. The parties given complaints against each other in police station Devari and NC cases were registered. The Police even taken preventive action against them, by filing chapter cases. Attempt was even made to settle their dispute with the help of villagers. However, the dispute could not be settled.

3. It was the case of the complainant that, she did file complaint in police station Devari on 07.02.2006 and also on 05.06.2006 even then police did not take proper action in this matter. It was alleged that HC Kahaviskar came on the spot on 07.06.2006 and also on 08.06.2006 and he suggested the complainant to demolish her structure and then to effect actual partition of the house property in dispute. Thus, HC Khaviskar compelled the complainant to demolish her structure. The Respondent neither demolished their part in house nor HC Khaviskar compelled her to demolish her structure. The complainant thus, became homeless and was required to take shelter in rented house. About this incident, she made complaints on 22.06.2006 and 17.09.2006. It was alleged by her that, Police Inspector Chavan submitted false report to Superintendent of Police, Gondiya. Therefore, she moved present complaint and sought necessary action in this matter.

4. The complainant made following prayer in this matter.



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(i) Action should be taken against the Respondents, Tulshiram and his wife Mantharabai, and they may be punished accordingly.

(ii) Action should be taken against HC Sukhdeo Khaviskar about misuse of powers and amount of Rs. 50,000/- be recovered from him, towards compensation / damages for demolition of house.

(iii) Suitable action needs to be taken against PI Chavan Police station Devari, for having given false report and for instead of giving justice, given wrong advice to demolish the house.

5. The Respondent Superintendent of Police, Gondiya by filing their report denied and disputed all the allegations made in the complaint. **Firstly**, according to them the land under the structure, which is in dispute, is the Government property. **Secondly**, the police have taken proper action in this matter and tried to settle their dispute. **Thirdly**, they denied that HC Kahaviskar or PI Chavan have given such advice to demolish the house etc.

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

(i) It has come in the report that land, under the disputed house, as per Grampanchayat record, is a Government land. The complainant did not produce any document to show that, the house was of their ownership. There arose a dispute about ownership, possession of the house property among the three sisters. There is no scope for doubt that, it was a matter of civil nature and it was to be heard and decided by competent Civil Court and not by the



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Commission. From the record it does not appear that the parties did take this dispute in the Court of law. It was incumbent upon the parties to avail proper remedy if any available under law and should not have attempted to solve the said dispute through police. In other words the complainant should have availed proper remedy. It is beyond the scope of powers and jurisdiction of the Commission to go so deep into the merits of the case and to record findings or order on the merits of the case and that too without jurisdiction. The Division Bench of High Court Bombay in A I R 2006 Bombay 44 (State of Maharashtra Vs. Sou Shobha Vitthal Kolte) held that,

**"Statute provided mechanism for redressal - Commission ordinarily should not entertain such complaint."**

Therefore, the Commission cannot entertain, deal and decide such civil dispute.

- (ii) The report shows that the parties on 07.02.2006 and 06.06.2006 lodged reports against each other in police station Devari and NC cases No. 161/2006 and 163/2006 were registered against the parties. As the dispute could not be settled and it continued, the police taken preventive action by filing chapter proceedings (No.147/2006) under Sec. 107, 116 (3) Cr PC. Thus, the police were justified in taking such action against the parties, in order to maintain peace, law and order.
- (iii) As it was a matter of civil nature, the scope for action for Police was limited. According to the complainant, HC Kahaviskar before panch witnesses, compelled the



complainant to demolish their house and therefore, she demolished the same. The other side naturally denied and disputed the same. The photograph filed on record, shows the house, in fallen condition. Now the only questions arises in this matter whether HC Kahaviskar given such advice / direction and whether the complainant demolished the said structure, in obedience to such direction given by HC Khaviskar. Whether HC Khaviskar given such direction etc is considered in the subsequent part of the order. However, one thing is clear that, HC Khaviskar cannot give such direction, to demolish the house, in a matter which is of civil nature. There is no scope for doubt that, if such direction was given, then it was definitely beyond the scope of powers and jurisdiction of Head Constable. In other words if such direction was really given by the Head Constable, then the said action was illegal, improper, and without jurisdiction. At the same time we cannot ignore the fact that, complainant in obedience to these directions, demolished her own house, and lost the shelter. Therefore, we have to view the case on this background.

- (iv) It is a fact that the said house was demolished on 08.06.2006, in presence of panch witnesses. From the record it is seen that, HC Khaviskar did investigation in this case and was present on spot on that day. The complainant would not have demolished the house, if no such directions were given by anybody. In the given circumstances there is every possibility that, HC Kahviskar required the complainant to demolish the house.



- (v) The complainant did disagree with the report given by Respondent Superintendent of Police, Gondiya. Therefore, this matter was referred to the Investigation Wing of the Commission. PI Ghavane visited the spot of incident, recorded the statements of the witnesses. It was reported that the complainant constructed new house on the same place and at present she is residing in this new house. The Special Inspector General of Police of Investigation Wing of the Commission, submitted the report. The relevant portion of the report is reproduced as under.

**“Though the Police Head Constable intervened in the matter with a good intention, the PI who made the enquiry did not give the correct picture to his superiors. If PI had given a factual report in time, the applicant would not have felt any feeling of harassment at the hands of Head Constable and there would not have been any chance for the applicant to make application against the Head Constable. Hence, necessary and suitable action may be taken against them – Chavan PI and Head Constable Shri Khaviskar.”**

I see no reason to disagree with this report given by the Investigation Wing of the Commission. Therefore, Departmental Inquiry against these two police officials, is necessary.



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(vi) It was prayed that suitable action may be taken against Respondents Mantharabai and her husband Tulshiram and they be accordingly punished. The provision of Section 12 (a) of the Protection of human Rights Act, 1993 is reproduced as under.

**"The Commission shall perform all or any of the following functions namely (a) inquire suo motu or on a petition presented to it by a victim or any person on his behalf (or on a direction or order of any Court) into complaint of (i) violation of human rights or abatement thereof or (ii) negligence in prevention of such violation by a public servant."**

The Commission cannot entertain complaint, made against, a public servant. High Court Madras in **2005 INDLAW MAD 259 (Santosh Hospitals Private Limited Vs. State Human Rights Commission Tamil Nadu and Ors.)** held that,

**"Human Rights deals with violation of Human Rights by a public servant and not by others."**

In view of this legal position the Commission cannot entertain and decide such matter of violation of human rights by Respondent No.1 Mantharabai and her husband Tulshiram.

7. After going through all the circumstances appearing in this case, it has become clear that, the PI Chavan and HC Khaviskar, in this matter did not act properly, exercised the



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jurisdiction not vested in them, etc. Therefore, I make following recommendations in this matter.

- (a) **Superintendent of Police, Gondiya (Rural) to hold proper inquiry against PI Chavan and HC Khaviskar attached to Police Station Devari and to take suitable action according to law.**
- (b) **Superintendent of Police, Gondiya (Rural) to take the said action at early date and to submit compliance report the Commission accordingly.**
- (c) **The copy of this order be sent to Superintendent of Police, Gondiya (Rural) through Secretary, MSHRC, Mumbai for information and necessary action.**

With these recommendations Case No. 648/2006-07 is disposed of accordingly.

Dated : 4 February 2009



*V G Munshi*  
(Justice V G Munshi)  
Member, SHRC