

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO.471 OF 2021
IN
WRIT PETITION NO.10567 OF 2018

Prafulla Adhar Shinde
Age: 53 years, Occu.: Agriculture,
R/o. Village Kusumba,
Taluka and District - Dhule.

.. Petitioner

Versus

1. Arvind R. Kale
Project Director, PIU, NHAI, Aurangabad,
National Highway Authority of India
Having office at
Project Implementation Unit (PIU),
B-23, Near Kamgar Chowk, Sector N-4,
CIDCO, Aurangabad - 431-003.
2. Prashant Dadaram Mendhe
Age: Major, Occu.: Service,
Project Director, PIU, NHAI, Dhule,
National Highway Authority of India
Having office at
Project Implementation Unit (PIU),
Mansaram Nagar, Near Circuit House,
Sakri Road, Dhule-424 002.

.. Respondents

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Mr. S. P. Shah, Advocate for petitioner.
Mr. D. S. Manorkar, Advocate for respondent No.1.

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

RESERVED ON : DECEMBER 07, 2022.

PRONOUNCED ON : JANUARY 17, 2023.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present petition has been filed under the provisions of Contempt of Courts Act, 1971 for taking action against the respondents for contempt of Court in Writ Petition No.10567 of 2018. It is also prayed that the respondents be punished for their willful breach of undertaking and obstruction in the process of administration of justice in the said writ petition.

2. The factual matrix leading to the petition are that the land admeasuring 8200 square meters belonging to the petitioner has been used for construction of National Highway No.6, however, compensation is paid only in respect of acquisition of 1700 square meters land. In other words, the compensation for remaining land admeasuring 6500 square meters is not paid at all and, therefore, the petitioner had filed Writ Petition No.10567 of 2018 seeking compensation. Respondent No.1 has filed affidavit-in-reply in which he had given undertaking that amount of additional compensation would be paid to the petitioner. At the time of affidavit-in-reply, respondent No.1 was the Project Director of PIU, Dhule and the respondent No.2 is the successor of respondent No.1 to the said office. The petitioner says that it was the duty and responsibility of respondent No.1 to honour the undertaking which was given by him to this Court. Secondly after he had been succeeded by respondent No.2; it was the responsibility of respondent No.2 to honour the said

undertaking. The land from Survey No.81/2 has been acquired on 15.12.2012 and compensation is paid to the extent of 1700 square meters only under the notice dated 16.12.2013. When it was noticed by the petitioner that the more land has been acquired, he had made representation on 14.03.2017 to the competent authority. The said representation was forwarded to the Deputy Superintendent of Land Records. Thereafter, the land Survey No.81 and its subdivisions were measured again on 15.06.2017 and at that time, it was revealed that total area of 8200 square meters has been utilized from Survey No.81/2. Communication has been received to that effect on 01.08.2017. Thereafter, CANH-6 had once again confirmed on 28.08.2017 about the said acquisition of the land belonging to the petitioner. The said authority issued a Recovery Certificate for recovery of additional amount wrongly paid to the brothers of the petitioner on 19.09.2017. Thereafter on 29.12.2017 the brothers of the petitioner applied to CANH-6 for removing the encumbrance and then it appears that the said authority has allowed the said application by the brothers of the petitioner. That order was passed without notice and opportunity of hearing to the petitioner. It appears that the brothers of the petitioner have made grievance about the measurement dated 15.06.2017 to the Director of Land Records, Pune on 06.08.2018 and all these facts were placed before this Court in Writ Petition No.10567 of 2018. However, the affidavit was filed in which undertaking was given by respondent No.1 that the additional

compensation would be paid to the petitioner, but now it is being refused. This amounts to breach of undertaking as well as Contempt of Court. Learned Advocate Mr. S. P. Shah appearing for the petitioner has taken us through all the documents and communication. He has pointed out the affidavit that was filed by respondent No.1 in the writ petition. He pointed out that in paragraph No.6, incorrect statements of facts have been made and the statements in paragraph No.8 are made to deviate the courts from deciding the writ petition. In paragraph No.8, it was clearly stated that as per letter dated 01.08.2017 issued by respondent No.3, the amount of compensation which was paid to the brothers of the petitioner for the land owned by him will be recovered and the same will be paid to the petitioner. This amounts to an undertaking and that affidavit was verified on 12.12.2018. It has also been pointed out that when it was noticed that the measurement of Gut No.81 was not properly done, the concerned employee i.e. clerk of City Survey office has dealt with departmentally and the measurement sheet done in 2012 then cancelled. The order dated 08.10.2018 has also been pointed out wherein also the then clerk of the City Survey office Mr. A. D. Wagh was punished for preparing wrong map. Our attention is then drawn to the order passed by this Court on 13.03.2019 in Writ Petition No.10567 of 2018 wherein this Court had taken note of the affidavit-in-reply filed by respondent No.1. It was observed by this Court in the said order that the respondent No.1 in its affidavit-in-

reply admitted that as per the revised joint measurement survey report, the area of the petitioner is increased and the area of the other land owners is equally decreased. When it was observed that the steps will have to be taken in respect of the award, the respondent No.3 is required to take steps and, therefore, learned AGP sought time to seek instructions. Thereafter, when the matter was on board on 07.08.2019, it appears that the learned Senior Advocate appearing for the petitioner, on instructions, of the petitioner, withdrew the writ petition in view of the affidavit filed by respondent No.1 and the statement was made that he would prosecute his right before the appropriate authority. It is, therefore, submitted that in view of the said affidavit filed by respondent No.1, the petitioner changed the stand and when assured about receiving the additional compensation, had withdrawn the said writ petition. If the facts would have been otherwise, the petitioner would not have withdrawn the said petition. Now, it has been tried to be said that no such petition was made by the petitioner before the other authorities. Under such circumstance, the respondents have committed contempt of Court and breach of undertaking and, therefore, they are liable to be punished.

3. Learned Advocate appearing for the petitioner has relied on the decision in ***Ajay Kumar Pandey (Advocate) in RE : (1998) 7 SCC 248***, wherein it has been observed thus :-

"18. The rule of law is the foundation of a democratic society. The judiciary is the guardian of the rule of law and if the judiciary is to perform its duties and functions effectively and remain true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts has to be respected and protected at all costs. It is for this reason that the courts are entrusted with the extraordinary power of punishing those for contempt of court who indulge in acts whether inside or outside the courts, which tend to undermine the authority of the courts and bring them in disrepute and disrespect thereby obstructing them from discharging their judicial duties without fear or favour. This power is exercised by the courts not to vindicate the dignity and honour of any individual Judge who is personally attacked or scandalised but with a view to uphold the majesty of law and the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake the very foundation itself."

Further, reliance has been placed on the decision in ***Shri Ahmed Ali Vs. The Superintendent, District Jail, Tezpur and others, [1987 SCC OnLine Gau 21]***, wherein it has been observed thus :-

"12. It may be noted that besides the two types of contempt, namely, Civil and Criminal as defined in the Act the inherent powers of the Court had been in existence prior to the constitution and are recognised by it in Article 129 and 215. These Articles declared as regards the Supreme Court and the High Courts respectively that they are Courts of Record and have the powers of such a

Court including the power to punish for contempt of itself. One of the essential attributes of a Court of Record is to exercise an inherent power in itself to protect and foster the administration of justice. It is essential to safeguard the dignity of the Court and protect it from any attack from any one which would undermine this dignity and lower the Court's prestige in the eyes of the common man. So what would offend this dignity and lower the Court's prestige is a matter for the Court to determine. A fortiori what is contumacious is for the Court to decide. Its discretion cannot be confined within the four walls of a definition. This does not mean that the Court shall not be guided by the definitions given in the Act but the categories of contempt may not be closed by the definitions."

He further relied on the decision of this Court in ***Kapol Cooperative Bank Ltd., Mumbai Vs. State of Maharashtra and others, [2005(1) Mh.L.J. 257]***, wherein it has been observed that, "The law is well settled that the intention is not an essential ingredient for commission of offence of criminal contempt of Court. However, when the acts complained of also disclose any such intention, certainly that would result in aggravating the offence and the same will have to be necessarily considered at the time of imposing sentence." As regards filing of false affidavit is concerned, it has been observed in this case that, "Undoubtedly, filing of false affidavit or making a false statement of fact on oath in a judicial proceedings would amount to interference in due course of such judicial proceedings and, therefore, it would fall under Section 2(c)(ii)

of Contempt of Courts Act. But at the same time it should not be forgotten that any such act which causes or tends to cause prejudice to the cause of opposite party or the litigant or results in delaying of dispensation of justice to such other party or litigant would certainly be an interference in the administration of justice and in that sense the contemptuous act could fall under both the provisions namely Section 2(c)(ii) and (iii). When the facts stated themselves are false, nothing further required to warrant contempt proceedings against the person who makes such false statement."

He further relied on the decision in ***Sunkara Lakshminarsamma and another, (2009) 7 SCC 460***, wherein also false statement was made in the affidavit and, therefore, exemplary cost was awarded.

4. Per contra, the learned Advocate appearing for respondent No.1 has relied on the affidavits-in-reply filed by respondent No.1 on 01.12.2021 and additional affidavit on 11.04.2022. Again the entire facts have been reiterated and it has been contended that the objection was taken by the petitioner in respect of the measurement and, therefore, on his representation joint measurement was carried out. He admits that the competent authority has initiated the recovery proceedings against the brothers of the petitioner and, therefore, the affidavit was filed in that sense only. There was no intention to communicate that the answering respondent or the office of NHAI

would initiate any recovery proceedings against the brothers of the petitioner. It is pointed out that there is no such provision in National Highway Act for initiating any recovery proceedings in respect of the compensation amount. Even the communication was issued to the Bank Manager, State Bank of India, Kusumba for freezing all the accounts of the brothers of the petitioner, however, further steps in the matter of recovery proceedings could not be undertaken. In fact the petitioner has misrepresented the contents of the affidavit. The photocopies of the communication have been attached herewith. Further, in the additional affidavit, it has been stated that no admission was given by him indicating that he would take up the steps. It was argued that if there is no authority with respondent No.1, then he cannot be the competent person to recover the said amount. Already the matter is pending before the Civil Court as the petitioner and his brothers has approached such Court. Respondent No.1 could not do anything. He, therefore, submitted that as there was no intention to stall any proceedings, the action for Contempt of Court cannot be taken.

5. At the outset, we are required to see that in the writ petition filed by the petitioner what was the prayer. Perusal of the copy of the said petition i.e. Writ Petition No.10567 of 2018 shows that the following were the relevant prayers :-

"C] By issuing appropriate writ, order or directions this Hon'ble Court may be pleased to direct the respondent No.2 to issue a fresh notification towards the acquired land of the petitioner and to grant the compensation towards land admeasuring 8200 square meters by adjusting the compensation paid towards 1700 square meters.

D] This Hon'ble Court may be pleased to direct the respondent No.1 to hold the departmental inquiry in the matter against the erring officers and to fix the liability.

E] This Hon'ble Court may be pleased to grant the compensation from the respondents from their pockets for the agony and hardship caused to the petitioner due to their dereliction of duties."

6. The affidavit-in-reply was filed by respondent No.1 in which certain facts were accepted such as acquisition of land and payment of compensation. However, according to the petitioner, it appears that he raised objection for the first time in the year 2017 by way of representation. We need not go into the aspect of delay on the part of the petitioner at this stage. Suffice it to say that his belated representation was also entertained and the land along with its subdivisions was re-measured. In the affidavit in writ petition, it has categorically stated that the situation is not such that the area, which was not part of notification, is included in the award and the compensation of the same is not paid. This indicated the fact that the amount of compensation was deposited by the acquiring body to the extent of 8200 square meters itself. Now, as regards the distribution

of the compensation amount is concerned, it would be as per the shares of the land owners. If there was any kind of dispute, then the law mandates that such person should approach the Civil Court and the competent authority cannot do much in that respect. No doubt, it appears that thereafter the action was initiated by the competent authority to recover the excess amount from the brothers of the petitioner. Whether such action could have been taken by the competent authority itself is a question, but paragraph No.6 contains reference to the communication dated 01.08.2017 and the factual situation therefrom. It was tried to be pointed out that on the date of verification or affirmation of the affidavit-in-reply, no such action of recovery of amount of compensation of the excess area was undertaken. Here, it is to be noted that the said affidavit was verified and presented in December, 2018 before the Court. The petitioner has neither pointed out the ingredients of the statement in paragraph No.6 of the affidavit when the matter was on board on 13.03.2019 or 07.08.2019. There was much gap and he could have sought copies of the said communication referred in paragraph No.6 from the competent authority. Further, as regards paragraph No.8 is concerned, it is stated that as per the letter dated 01.08.2017 issued by respondent No.3, the amount of compensation, which was paid to the brothers of the petitioner, would be recovered and the same will be paid to the petitioner. The action was taken by the competent authority, however, it appears that, that has been dropped at a later

point of time. The affidavit in present contempt petition would then disclose that such power was not available with the competent authority.

7. What we can realize is that the withdrawal of the petition on 07.08.2019 was the voluntary act on the part of the petitioner. He had engaged Senior Advocate and after considering the affidavit, he has withdrawn the writ petition and the statement appears to have been made that he would prosecute his right before the appropriate authority. Still, at that time, it appears that the learned Advocate for respondent No.1 had submitted that in the affidavit filed by respondent No.1, there is no clear admission about the area of the petitioner. The affidavit states that, it appears from the letter of the competent authority about the area. Therefore, there was a hitch and indication given by the learned Advocate for respondent No.1 when the said statement was made that the petitioner need not rely upon the statements in the affidavit-in-reply for withdrawing the petition. The legal position could have been checked before seeking withdrawal of the petition. Any aspect that is required to be considered is that this Court while allowing the petitioner to withdraw the petition has not considered paragraph No.8 as the undertaking by respondent No.1. It was a statement and it ought to have been got crosschecked. There is difference between an incorrect statement and false statement. False statement *per se* has the ingredient of

falsity that too to the knowledge of deponent. Here, respondent No.1 whatever has been stated in his affidavit before this Court in writ petition, has relied on the communications. At the most, it can be said that though he was not competent, he had given some advise or had shown some way to solve the problem or representation.

8. The ratio laid down in the aforesaid authorities cannot be denied at all, however, the facts are different and it cannot be said that the affidavit-in-reply filed by respondent No.1 in the writ petition was a false affidavit. At the most, it was incorrect, but still it was based on some kind of communications. Though always intention may not be the essential ingredient as regards the criminal contempt of Court is concerned, yet taking into consideration the acts of the respondent in responding to the representations by the petitioner and also after coming to know that there was some dispute in respect of earlier measurement, got the re-measurement done shows that the authority wanted to solve the dispute. At one point of time it is stated that the brothers of the petitioner have knocked the doors of Civil Court and the matter would be decided there. If at all it is found and proved that the area admeasuring 8200 square meters belonging to the petitioner was acquired, then still it is open that he would get the amount of compensation. Further, there is also a specific provision under the National Highway Authorities Act to that extent.

9. For the aforesaid reasons, we do not find this to be a fit case to initiate action for Contempt of Court or in respect of breach of undertaking (as the affidavit in the earlier petition was not treated as undertaking by this Court) and, therefore, the petition deserves to be rejected. Accordingly, it is rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm