

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 5 OF 2014

IN

APPEAL FROM ORDER NO. 75 OF 2008

EASTERN STAR HOTELS & RESORTS PVT.
LTD. THROUGH ITS REP. AND GENERAL
MANAGER MR. VIKRAM GOHAR

... Petitioner

Versus

MR. SHYAMSUNDER MAHABALESHWAR
BAGKAR AND ANR.,

... Respondents

Shri Shivan Desai, Advocate for the Petitioner.
Shri G. Naik, Advocate for the Respondents.

Coram:- N. M. JAMDAR, J.

Date:- 29th January, 2015

ORAL ORDER:

By this Contempt Petition, the petitioner seeks an order to take action against the respondents for committing contempt of the order passed on 6th February, 2009 in Appeal From Order No.75/2008.

2. The petitioner is a registered company and holds 16,990 square metres of land at village Morjim. According to the petitioner, certain unknown persons, representatives of the respondents had entered the suit property and damaged the fencing of the petitioner and cremated a dead body. A suit was filed by the petitioner seeking an order of injunction along with an application under order 1 Rule 8 seeking to sue the respondent in representative capacity on behalf of the residents of Morjim Village. According to the respondents, the property was used as a crematorium since immemorial.

3. In the suit, the petitioner took out an application for interim injunction, which was rejected and, thereafter, an Appeal From Order was filed. In the Appeal From order, this Court came to the conclusion that the petitioner is required to be protected by an order of injunction and prima facie there was no existence of customary right in favour of respondents. Accordingly, the respondents and other villagers were prevented from entering into suit land and cremating any dead body.

4. The Contempt petition is filed alleging that on 30th November, 2014, the respondent along with 100 other villagers trespassed in the property and cremated a dead body of one Mahabaleshwar Bagkar. According to the petitioner this was in violation of the order passed in the appeal. He submitted that in the past also such acts were committed and the villagers have tendered apology. Shri G. Naik, the learned Counsel for respondent no.1 has tendered an affidavit in reply denying the factual assertion. He contended that there was no cremation as alleged of late Mahabalehwar Bagkar in the property and he was cremated on the banks of river Shapora.

5. Considering the sweep of the order passed in Appeal From Order, in a suit filed in a representative capacity against almost the entire village, it is difficult for this Court in contempt jurisdiction to examine each and every case of trespass by each of the villagers, every time it occurs. It will be difficult to examine each case of alleged trespass, the factual dispute regarding the same in contempt jurisdiction. Contempt jurisdiction cannot be called upon to be

exercised in this fashion.

6. The appropriate course of action for the contempt petitioner is to seek enforcement of the order of injunction through police machinery. It is informed by the learned Counsel that such application for police protection is already granted. I am of the opinion that instead of exercising contempt jurisdiction, in the peculiar facts and circumstances of the present case, it will be appropriate that the petitioner approaches the police authorities whenever it apprehends trespass and if such application is made by the petitioner, the police authorities will extend all co-operation. The police authorities will ensure that the order passed by this Court on 6th February, 2009 is enforced.

7. In view of this position, which provides adequate safeguard to the petitioner, it is not necessary to pass any further order in the Contempt Petition, which is accordingly disposed of. It will be open to the petitioner to furnish the copy of this order to the concerned police station.

N. M. JAMDAR, J.

NH