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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.138 OF 2014**

Shri Ganesh Balu Patil ... Petitioner
Vs.
Mr. A.L. Jarhad,
The Commissioner,
Navi Mumbai Municipal Corporation & Ors. ... Respondents

Mr. Sachin P. Shetye, for the Petitioner.
Mr. Sandeep V. Marne, for the Respondent Nos.1 to 3.

**CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.**

DATE : 23rd JUNE, 2015

PC.

. Essentially the breach alleged is of the solemn undertaking given to this Court by the Navi Mumbai Municipal Corporation which is recorded in order passed by a Division Bench of this Court on 2nd August, 2013 in a Contempt Petition No.270 of 2013. The relevant part of the said order reads thus :-

“ The order is dated 10th December 2012 and it directs the Corporation to proceed in respect of the unauthorized structure. The action was to be taken in accordance with law.

2. Though belatedly, the action has been taken and what we find is that the delay may not have been

explained properly, but there are indications that the Corporation is moving to demolish the entire unauthorized structure as claimed by it in this affidavit. Further Mr. Marne, learned counsel for Respondent Nos.2 and 3 assures and undertakes to this Court that the balance unauthorized construction noted at site would also be removed in accordance with law and necessary steps in that behalf would be taken within six weeks from today. By accepting these statements and finding that in contempt jurisdiction, we cannot grant any substantive reliefs, we dispose of this Contempt Petition. The Petition is disposed of accordingly.”

(underline added)

2. There is a reply filed by Shri Sanjay Tayde, the Administrative Officer of the Navi Mumbai Municipal Corporation. He has stated in the reply that in terms of the aforesaid undertaking given by the Municipal Corporation, notices dated 30th August, 2013 were issued to the occupiers of the structures in question under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966. It is further stated that in a Civil Suit filed by Shri. Dhanaji Soga Sashte in the Court of Civil Judge, Junior Division, Vashi, ad-interim injunction has been granted on 3rd October, 2013 and, therefore, the Municipal Corporation could not implement the undertaking recorded as above. This affidavit has been filed on 21st April, 2015.

3. The learned counsel appearing for the Navi Mumbai Municipal Corporation states that the order of ad-interim relief is operative even as of today.

4. The learned counsel appearing for the Petitioner submitted that the Municipal Corporation did not comply with the undertaking within reasonable time. He submits that as the person who has carried out unauthorised construction is a close relative of an Elected Councilor of the Municipal Corporation, the officers of the said Corporation are hand-in-glove with the person who has carried out illegal construction.

5. The stand taken by the Municipal Corporation in the reply is that in view of the ad-interim order of the Civil Court dated 3rd October, 2013, the Municipal Corporation is not in a position to abide by the assurance given to this Court. We accept the statement made by the learned counsel appearing for the Municipal Corporation that the prohibitory order of the Civil Court still continues to operate even as of today. Hence, it cannot be said that this is a case of a deliberate or willful breach of the undertaking given to this Court by the Municipal Corporation. Though no case is made out for initiating action under the Contempt of Courts Act, 1971, we direct the Municipal Corporation to take all steps for contesting the Suit and pending interim application

therein. If interim application is pending for inordinately long time, it will be open for the Municipal Corporation to apply to the concerned Court for vacating the ad-interim relief.

6. Subject to what is observed above, the Petition is disposed of.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)