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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 376 OF 2012

Mr. Raghunath Shankar Kelkar

.. Petitioner

Vs.

Mrs. Shama Hanumant Mundhe-Jadhavar & ors.

.. Respondents

Mr. Rajesh S. Patil for petitioner.

Mrs. Sangeeta D. Shinde, APP for State.

Mr. Abhijit P. Kulkarni for respondent no.3.

CORAM: B. P. DHARMADHIKARI &  
A. S. GADKARI, JJ.

JULY 20, 2015.

P.C.

1. Heard Advocate Mr. Patil for petitioner, Advocate Mr. Kulkarni for respondent no.3 and learned APP for respondent no.2. Nobody appears for respondent no.1. However, respective counsel invite our attention to the reply filed on behalf of respondent no.1.

2. Prayer of petitioner is to register offences punishable under

Sections 193 and 196 of the Indian Penal Code against respondent no.1. Submission is that in Contempt Petition No. 129 of 2011, which has been disposed off by learned Single Judge of this court on 14/2/2012, incorrect statements have been made.

3. In order to demonstrate the case, Advocate Mr. Patil has taken us through orders dated 25/1/2011 passed on Civil Application No. 115 of 2010 in Public Interest Litigation No. 181 of 2007, order dated 9/2/2012 passed in Writ Petition No. 1335 of 2012 and the order dated 14/2/2012 in Contempt Petition No. 129 of 2011.

4. Advocate Mr. Kulkarni, on behalf of the respondent no.3 – Municipal Corporation submits that facts on record are not being disputed by Municipal Corporation and as such formal affidavit-in-reply has not been submitted. According to him, possession of land acquired has been taken by the State Government and as part of it is encroached and is in possession of slum dwellers, Municipal Corporation cannot accept possession of remaining part. However, he states that steps have been taken to protect remaining un-encroached plot.

5. Learned APP has invited our attention to the fact that respondent no.1 was Special Land Acquisition Officer and she has filed the reply-affidavit through an Advocate appointed for her as per order of this court. She points out that respondent no.1 has only stated that after taking possession, papers were forwarded to Municipal Corporation.

6. After hearing respective counsel and after perusal of various orders, we find that land admeasuring 1511.70 sq.mtrs. was under acquisition and respondent no.3 – Municipal Corporation needs it for locating a school. Petitioner has pointed out that compensation amount approximately of Rs.3 crores have been paid by Municipal Corporation through its funds to State Government and land has not been put to that use till date. Advocate Mr. Patil submits that if there was any encroachment, the encroachment needed to be removed. He invites attention to order dated 9/2/2012 in Writ Petition No. 1335 of 2012 to urge that petitioners therein were slum dwellers and they were asked to make representation to Municipal Corporation and Municipal Corporation was supposed to decide it in time bound manner. For want of instructions, he is not in a position to indicate further development thereafter.

7. After hearing respective counsel, it is apparent that land has still not been put to the desired use and huge public funds are at risk. It appears that land is in possession of slum dwellers.

8. In the background of orders passed by this court on 9/2/2012 in Writ Petition No. 1335 of 2012, it was necessary for petitioners therein to make a representation and then for Municipal Corporation to take appropriate decision upon it and depending upon fate of that decision, further appropriate action for removal of encroachment would have been taken.

9. The prayer to register offences appears to be not substantiated as the officer, in reply, has specifically pointed out that the possession was taken by the Government and papers thereabout were forwarded to Municipal Corporation. It is not the case of respondent no.1 that possession was at any time handed over to Municipal Corporation.

10. However, considering the apprehension of the petitioner, we find it in interest of public that respondent no. 3 – Municipal Corporation should proceed further in the matter as per orders dated 9/2/2012 in Writ

Petition No. 1335 of 2012. If any representation is received and decided, it has to proceed further as per modalities laid down therein. If there is no representation received, it has to proceed further in accordance with law for removal of encroachment. The responsibility is also on the shoulder of respondent no.2 – State Government as it has acquired the land for Municipal Corporation and has also received the consideration therefor from Municipal Corporation.

11. In this situation, we direct respondent nos.2 and 3 to take necessary steps within eight weeks from today. With these directions and keeping all rival contentions of parties in relation to it open, we dispose of the present application. No costs.

(A. S. GADKARI,J.)

(B. P. DHARMADHIKARI,J.)