

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CONTEMPT PETITION NO.388 OF 2013
IN
FIRST APPEAL NO.1549 OF 2009

Mr. Surbhi Hamir Merchant & Anr.

... Petitioners

V/s.

Radheshyam Ganesh Sodhani & Ors.

... Respondents

Mr. Vishal Lanjekar i/b,. Y. S. Bhate for the Petitioners
Mrs. Premlata Modani for the Respondent Nos.2 to 5.
Mr. A. R. Patil, AGP for Respondent Nos.6 and 7.

CORAM: K.K. TATED, J.

DATED : MARCH 3, 2015

PC. :

1. Heard the learned counsel for the parties. This contempt petition is filed by the original Respondent Nos.1 and 2 alleging that the Respondent violated the order dated 09/02/2010 passed by this court in First Appeal No.1549/2009.

2. It is the case of the Petitioners that though this court, by order dated 09/02/2010 directed the Respondents not to take any policy decision and not to deal with or dispose of or alienate any property or funds of the Trust till decision of the Application No.07/2003 and change report dated 656/2006 by the Charity Commissioner, Greater Mumbai, the Respondent has committed the contempt as more particularly described in paragraph 23 of the petition.

3. The learned counsel for the Respondent submits that the Charity Commissioner decided the Application No.8/2003 (wrongly mentioned as 7/2003 in order dated 09/02/2010) and change report No.656/2006 by order dated 02/07/2012 and thereafter they enrolled new trustees on record.

4. The learned counsel for the Respondent submits that in respect of the Trust property situated at Damodar Hirji Dharmashala, 2nd Banganga Cross Lane, opposite Bhatia Niwas, Walkeshwar Road, Banganga, Mumbai – 400006, the Mumbai Municipal Corporation issued notice under section 354 of the Mumbai Municipal Corporation Act, 1888 dated 16/02/2013 directing the Respondent to pull down the said building which was in dilapidated condition. He submits that pursuant to the said notice, they applied to the Municipal Corporation for carrying out necessary repairs. Thereafter, the Municipal Corporation through V. J. Joshi & Associates, registered Structural Engineer inspected the said building and held that it is not possible to carry out the repairs to the said building and it is required to be demolished. The learned counsel for the Respondent relies on the following paragraph from notice dated 25/03/2013 issued by the Municipal Corporation.

“In response to the notice, Trustees approached to the office of E.E. (B.P) City-I through Architect M/s. Prime Consultant by submitting proposal for repairs of the existing building. While carrying out the work of propping and safeguarding the dangerous portion of the building, some dangerous portion was collapsed. The matter was discussed/brought to the notice of E.E.(B.P) City-I

when E.E.(B.P) City-I DIRECTED Architect to approach to the office of .A.E.(B & F) “D”, Ward along with structural stability certificate for further necessary action. The Registered Structural Engineer Shri V. J. Joshi & Associates (STR/J/11 M30697) vide his Certificate u/no.VJJ/Cert-K/30/2013 and Report u/no.VJJ/Report/43/2010 dtd.19-03-2013 opined that, the building under reference is in highly dilapidated condition and beyond economical repairs. hence it needs to be pulled down immediately upto ground level to avoid any mishap. The site was inspected by Executive Engineer “D” Ward on 19-03-2013 and it was opined that the building under reference is highly dilapidated and unsuitable for human habitation. Hence, the complete fire papers were forwarded to Dy. Ch. E.B.P. (City) for orders to pull down the building. The site was inspected by Dy. Ch.E.B.P. (City) on 21-03-2013 along with Consultant of M.C.G.M. Panel Shri Shashank Mehendale for second opinion. After inspection, Dy. Ch.E.B.P. (City) vide their letter u/no. Dy.Ch.E/7164/(B.P) City dtd .25-03-2013 agreed to the opinion of pulling down the building under reference given by .E.E.'D' Ward and Consultant on M.C.G.M. Panel, Shri Shashank Mehendale.”

5. The learned counsel for the Respondents submits that pursuant to the said notice and after following due process of law, they demolished the said dilapidated building. Hence, there is no question of any contempt committed by them by violating the order dated 09/02/2010 passed by this court in First Appeal No.1549/2009 with Civil Application No.4144/2009. Hence, there is no substance in the present contempt petition and same be dismissed.

6. In the present proceedings, this court, by order dated 09/02/2010 directed the Respondent not to take any policy decision and/or not to deal with or dispose of or alienate suit property till final disposal of the Application No.07/2003 and change report dated 656/2006 by the Charity Commissioner, Greater Mumbai. These two

Applications were decided by the Charity Commissioner by order dated 02/08/2012. Even demolition of the building was done by the Respondent after following due process of law.

7. The power of the High Court to punish for contempt is intended to protect the majesty of the law and the dignity of the Court. The power is intended to take within its purview willful or deliberate acts which constitute a defiance or breach of a judgment or order of the Court.

8. Considering the facts and the law regarding contempt of court, I do not find any substance in the present contempt petition. Same is rejected.

(K.K. TATED, J.)