

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.381 OF 2015
IN
APPEAL FROM ORDER NO.480 OF 2013

Dattatraya Shripati Sathe	... Petitioner
vs.	
Suyash Developers and Others	... Respondents

Mr. Sanjiv Sawant, for the Petitioner.
Mr. A.A. Kumbhkoni, Senior Advocate i/b. Mr. T.D. Deshmukh
for the Respondents.

CORAM: MRS.MRIDULA BHATKAR, J.

JUDGMENT RESERVED ON : 29th SEPTEMBER, 2015
JUDGMENT PRONOUNCED ON : 6th OCTOBER, 2015

JUDGMENT:

. This Contempt Petition is directed against the conduct of the Contemner/Developer Builder who has breached the order of this Court dated 5th May, 2015 directing the Respondents to maintain status quo pending the Appeal.

2. The Petitioner has filed civil suit for injunction and the declaration against the Respondents pending the suit. The Plaintiff i.e.

Petitioner claims undivided share and his right in the plots bearing survey Nos. 60(1), 60(3) and 65(1) at village Pimpale Saudagar, Tal. Haveli, Dist. Pune. It is an ancestral property of his family and it was fraudulently sold to the Respondents. The Petitioner's application for interim injunction was rejected by the trial Court against which the Appeal from Order is preferred before this Court in which the impugned order was passed. It is the contention of the Petitioner that though the order of maintaining status-quo was passed on 5th May, 2015, the Respondents deliberately ignored the said order and entered into a sale deed on 14th May, 2015 and therefore committed contempt of the Court in respect of many flats in the building standing on the suit premises. Hence, this Petition.

3. The learned counsel for the Petitioner has submitted that the Contemner had knowledge of this order as the said order was extended time to time i.e. on 8th May, 2015, on 22nd June, 2015 and thereafter till today. He submitted that the Respondents ought not to have taken steps in violation of the interim order but they have disposed of the plots and offices in the building which are standing on the suit land. He submitted that the description of such flats and

shops are given in the Petition and also by way of Annexure the details are furnished. The agreement in respect of other flats in other buildings standing on suit premises are filed along with the Petition.

4. After issuance of the notice, the Contemners appeared in the proceeding and they have filed their reply. The learned senior counsel Mr. Kumbhkoni has submitted that at the outset the Respondents have tendered apology in the first para of their affidavit in reply. It is contended by the Contemner that they have not committed any contempt of the order of this Court by violating the order dated 5th May, 2015. He submitted that admittedly the Petitioner claims his right on plot Nos. 60(1), 60(3) and 65(1). The Respondents have purchased these plots along with other plots bearing Survey Nos. 78(1), 78(2A), 78(2B), 78(3), 78(4), 78(5), 78(6), 60(1), 60(2) and 60(3). He submitted that for the purpose of development, all the plots are amalgamated and the F.S.I. was jointly used for the purpose of construction of the buildings. However, no flat in the building which is standing on the plot Nos. 60(1), 60(3) and 65(1) is sold or registered by the Respondents after 5th of May, 2015. He further submitted that on 5th of May, 2015, this Court has passed

the order of status-quo. The learned advocate on record for the Contemner has submitted his leave note and his junior attended the Court on that day. He submitted that the flats were already sold and the agreements were registered after the said date. The third party rights were already created prior to 14th May, 2015. However, the flat No. 101 and 1004 mentioned in the Contempt Petition are not standing on the suit land. These flats are standing on the plots bearing survey No. 78 and 60. Thus the Respondents have not disobeyed the order of this Court. He further submitted that there is no merit in the case and therefore there is no contempt.

5. Perused the order passed by this Court. So also the documents filed by both the parties. At the time of agreement the Petitioner had relied on the sale of the flats of which the agreements are annexed with the Petition. In the body of the Petition in para 6 only two transactions in respect of plot Nos. 101 and 1004 are specified. Therefore, the agreements of the said two flats are perused. It shows that on 14th May, 2015 these agreements were registered and therefore there may be earlier negotiations and some money transactions might have taken place prior to that. Both the

agreements discloses that 67 plots including two suit plot bearing survey Nos. 60(1) and 60(3) were amalgamated for the purpose of development and the buildings are constructed on these plots. Needless to say that the F.S.I. of plots bearing survey No. 60(1) and 60(3) was consumed for the construction of the buildings. Whether the buildings are standing on these two plots or not is not clear. However, the agreements in respect of plot bearing survey Nos. 101 and 1004 disclose that these two flats are in the building which stands on the survey No. 78 and not on suit plot Nos. 60(1) & 60(3).

6. Under such circumstances, it can not be ascertained whether it was really a willful disobedience or not. Under the Contempt of Court Act, action taken is severe and the penalty is harsh. Therefore, it is necessary to satisfy the judicial conscious that the act committed by the Contemner is definitely a willful disobedience showing disregard to the authority of the Court ? In the present case, there was no interim order running against the Respondents throughout the suit and also immediately after filing of the Appeal. This Appeal is filed in the year 2013 and the order of status quo was passed on 5th May, 2015.

7. Considering the nature of the transactions which had taken place subsequently and the nature of the rights claimed by the Petitioner, I am not satisfied that the Plaintiff has committed any contempt.

8. Hence, Contempt Petition No. 381 of 2015 stands dismissed.

(MRS.MRIDULA BHATKAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.