

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CONTEMPT PETITION NO. 243 OF 2012

Riyazuddin Hazrattulla Sayyed

... Petitioner

V/s.

MCGM & Ors.

...Respondents

Mr. S. P. Srivastava for the Petitioner

Mr. R. S. Apte, Senior Advocate with Mr. A. K. Nandanwar for the
Respondent.

CORAM: K.K. TATED, J.
DATED : APRIL 21, 2015

PC. :

1. Heard the learned counsel for the parties. This petition is preferred by the Plaintiff alleging that the Respondent Corporation by violating the order dated 06/08/2011 passed by the Bombay City Civil Court, Mumbai in L.C.Suit No.70/2011 demolished the Petitioner's suit structure i.e. hut No.85/HW/SG/31/24 (room No.179) plot No.1, Shastri Nagar, near BEST Bus Depot, Bazar road, Bandra (W), Mumbai – 400050.

2. The learned counsel for the Petitioner submits that immediately after the order passed by the Trial Court on 06/08/2011, the Petitioner, by their letter dated 02/09/2011 informed the Respondent Assistant Municipal Commissioner H/West Ward Municipal Corporation, Bandra (W), Mumbai and forwarded a copy of the order dated 06/08/2011 for their information. He submits that in the said letter, details and the

dimensions of the construction of the suit structure were stated.

3. The learned counsel for the Petitioner submits that in spite of the order passed by the Trial Court on 06/08/2011 the officers of Respondent demolished the suit premises on 16/05/2012 without following due process of law. He further submits that immediately on next day i.e. 17/05/2012 the Petitioner, through his advocate wrote a letter to the Assistant Municipal Commissioner H/West Ward, Mumbai stating that in spite of order passed by the Trial Court on 06/08/2011 their officers, without following due process of law demolished the suit structure. He submits that in paragraph 4 of the said letter, the Petitioner specifically stated that on 16/05/2012 Mr. Malvankar, Mr. Patil and Mr. Mukadam and other staff members, along with police came to the room and forcibly demolished the same. He submits that on the date of demolition the Petitioner specifically informed Mr. Malvankar that there is stay order granted by the Hon'ble Court, but he refused to listen the same. Hence, the Petitioner requested the Assistant Municipal Commissioner to look into the matter and direct their officer to reconstruct the room. He further submits that thereafter the Petitioner, through his Advocate, wrote letter dated 25/05/2012 to the contemnor i.e. Mr.Sripad Patil, Mr. Harshad Malvankar and Mr. Siddharth Mukadam stating that in spite of order passed by the Trial Court on 06/08/2011, without following due process of law, they demolished the suit structure. The Petitioner by his letter called upon the contemnor to reconstruct the suit premises and return all goods, articles and materials of the Petitioner. The Petitioner also claimed damages of Rs.80,000/- from them. The learned counsel for the

Petitioner submits that thereafter the Petitioner, through his Advocate wrote a letter dated 07/06/2012 to the Municipal Commissioner, Mahapalika Bhavan, Mumbai – 400001 requesting the Commissioner to look into the matter and direct the concerned authority to reconstruct the room as it was earlier and return all the goods, articles and materials of the Petitioner.

4. The learned counsel for the Petitioner submits that in spite of several letters written to the Respondent contemnor, they failed and neglected to reconstruct the said structure and return all articles, goods and materials to the Petitioner. Hence, the Petitioner constrained to file the present petition for taking appropriate action against the contemnor for willfully violating the order dated 06/10/2011 passed by the Trial Court.

5. On the other hand, the learned senior counsel for the Respondent Corporation opposed the petition. The Respondent filed the Affidavit-in-Reply of Mr. Malvankar - Respondent No.3 opposing the present petition. The learned senior counsel for the Respondent submits that the Petitioner filed the present petition with mala fide intention to bring pressure on Respondents. He submits that the suit structure referred to by the Petitioner was not demolished by the Respondent on 16/05/2012, however, the plastic shed of bamboo wall situated on the road side was demolished after arranging the pre-demolition programme in respect of initiating the demolition action against the unauthorised shanties, wooden stall. He submits that till today the suit structure is in existence. In support of this contention, the learned

senior counsel for the Respondent relied on the photographs which are marked "B" in the Affidavit-in-Reply. In support of this contention, the learned senior counsel for the Respondent relies on paragraph 3 of the Affidavit-in-Reply filed by Respondent no.3. He submits that in view of these facts and the solemn statement made by the Respondent No.3 in para 3 of his Affidavit-in-Reply, nothing survives in the petition. Hence, same be dismissed with costs.

6. It is to be noted that in the present proceedings, the Trial Court passed order dated 06/08/2011 restraining the Respondent Corporation from demolishing the suit structure without following due process of law. Operative part of the said order reads thus:

"1. The Defendant / Corporation not to demolish the suit structure viz. room No.179, admeasuring 10' x 15' made of B.M.Walls towards north and west, Patra wall towards sought side and door toward east side and cement sheet roof, situated at Plot No.1, Shashtri Nagar, Bazar Road, Bandra (W), Mumbai except by following due process of law or otherwise than by law.

2. In view of the above, nothing survives in the Notice of Motion and suit and therefore, Notice of Motion and suit stand disposed of.

3. The Plaintiff is directed to furnish details about dimensions, mode of construction of the suit structure to the concerned ward office of the Defendants without delay.

4. It is made clear that under the guise of the aforesaid order of injunction the Plaintiff shall not add, alter or change condition of the existing structure.

5. Parties are left to bear their own costs."

7. It is specifically stated in the said order that the Respondent Corporation shall not demolish the suit structure except by following due process of law. The Affidavit-in-Reply filed by Respondent no.3 and particularly paragraph 3, it is clear that the Respondent has not taken any action for demolition of the suit structure. The suit structure is in existence till today.

8. Considering the submission made by the learned senior counsel for the Respondent and the Affidavit-in-Reply filed by Defendant No.3 and paragraph 3 thereof, I am of the opinion that the Petitioner has failed and neglected to make out any case for taking action against Respondent under contempt of courts act. Hence, the contempt petition stands rejected.

(K.K. TATED, J.)