

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

WRIT PETITION NO. 1021 OF 2014

Dr. Dilip Krishnarao Apturkar ... Petitioner

Vs

1. State of Maharashtra & Ors. ... Respondents

Mr. Faran M. Khan with Mr. Pratik Surti i/b R./Sathyanarayanan
for the Petitioner.

Mr. A.I. Patel, AGP, for the Respondent Nos.1, 2, 4 to 6, 8 to 10 –
State.

Mr. Abhijit M. Adagule for the Respondent No.11.

Mr. P.M. Arjunwadkar for the Respondent No.12.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

MONDAY, 14TH DECEMBER, 2015

P.C. :

1. The petitioner and his wife are practicing doctors and were conducting their own Nursing Home in Kolhapur. The petitioner claims to be a practicing surgeon presently posted as an Associate Professor at Rural Medical College, Loni (Ahmednagar) and his wife is an Ayurvedic doctor.

2. The petitioner claims that the respondent No.12 has carried out illegal and unauthorized construction and is running a boys' hostel illegally in the premises.

3. It is the claim of the petitioner that being members of a Cooperative Housing Society, the expectancy is that they would understand their obligation and duty towards the society and each other. By residing in the same society and being members thereof, mutual respect, affection and love is not something which a court of law can bring in nor inculcate. A court of law can only proceed in the event there is any illegality.

4. In this case, the petitioner complains that correspondence with several authorities did not yield any outcome or result. The construction which is claimed to be illegal by the petitioner and the user was continuing. It is in these circumstances that the petitioner filed a writ petition being Writ Petition No.197 of 2013 in this Court and on 8th September, 2013, a Division Bench, after hearing the petitioners' advocate and the learned Assistant Government Pleader for the State passed the following order :

“1. The grievance of the petitioners is about unauthorised encroachment by respondent No.12 on the petitioners property. The grievance can be redressed by the respondent No.3, Chief Executive Officer and the respondent no.2, District Collector. The said authorities are directed to initiate appropriate action, as may be advised, on the basis of the grievance made by the petitioners and that action should be taken to its logical end. The concerned Authority shall record reasons and communicate to the petitioners within four weeks from today to enable the petitioners to take recourse to other remedy, as maybe permissible in law, if necessary.

2. Further, we make it clear that if it is a case of construction of structure without appropriate permission of the local authority, that issue will have to be addressed by the local authority itself and cannot be considered as private dispute between the parties.

3. Petition is disposed of on the above terms. We make it clear that we are not expressing any opinion on the merits of the contention raised in the petition or available to the parties in the proceedings.”

5. The petitioners state that after this order was passed, the petitioners approached the District Collector, Kolhapur and the Chief Executive Officer, Zilla Parishad, Kolhapur. They brought to their notice this illegal act and a Court order. The hostel and illegal construction on plot No.334, R.K. Nagar, Kolhapur was the subject matter of the complaint and the order of the court. The petitioners' grievance is that this complaint was made over to

some officer to act, but no steps were taken so that the court's order is implemented and executed in letter and spirit. It is clear from the annexures to this petition, which is moved for contempt, that the detailed correspondence with all such authorities, including the local bodies and the police highlighted that the construction which is carried out is not in accordance with law. Similarly, the change of user also contravenes the legal provisions.

6. The petitioner pointed out to the police authorities that instead of taking cognizance of these illegal activities of the person indulging in the same, it is the petitioner and his family members who are targetted and by some officers.

7. It is in these circumstances that the petitioner has moved this Contempt Petition and after pointing out that how the advocate's notice was addressed in which the essential issue raised was that in a residential colony or locality, a commercial user is prohibited and should not be, therefore, allowed, there is no response. Rather, the concerned private respondent is emboldened to state that he has been paying taxes and dues to

local bodies for such commercial user.

8. On the earlier occasion and after perusing the affidavit filed by respondent No.12, we indicated to the learned advocate appearing for the respondent No.12 as to how repeated litigation before this Court resulting in the orders of the aforesaid nature have not brought about the desired effect, our attention was invited to the affidavit filed in reply to this petition. It is stated that the present petitioner repeatedly files writ petitions in this Court for the same relief. At the same time, in this affidavit it is stated on oath that the Additional Collector had issued a notice and in reply which is fairly detailed, the respondent No.12 pointed out that the construction is legal and authorized. The possession of the plot No.334 was obtained from R.K. Nagar Cooperative Housing Society. The possession was handed over after complying with all formalities. A prior permission of the local authority, namely, the Gram Panchayat was obtained for the construction and there is a denial of any encroachment. It is claimed in paragraph 21 that the respondent No.12 has been paying the commercial taxes and, therefore, the use as hostel is not illegal and prohibited. Then, it is claimed that there have

been various business premises, petrol pumps, fuel outlets and the petitioner does not make any grievance in regard thereto. Therefore, this is ill-motivated and an exercise smacking of personal vengeance and vendetta. On our attention being invited on the earlier occasion to page 184 of the paper-book, which is stated to be a copy of the Dispute Application filed in the Cooperative Court at Kolhapur by the respondent No.12, it is claimed that the said Dispute is pending in the Cooperative Court. At best this Court can direct expeditious disposal of the same, but surely this is not a matter for initiating contempt proceeding.

9. We have perused a copy of this Dispute Application from pages 184 to 189 of the paper-book and its prayers.

10. Mr. Arjunwadkar learned counsel appearing for the respondent No.12 states, on instructions, that there are presently no orders in favour of the respondent No.12 in this Dispute. The Dispute is pending. No interim order has also been made in favour of the respondent No.12 either. Thus, till date, he has not been able to obtain a declaration that the respondent Nos.1,2 and 3 to this Dispute, namely, the Chairman / Secretary of the

Ratnappa Kumbharnagar Nagar Cooperative Housing Society No.2, Kolhapur nor the present petitioner Dilip Apturkar or the Grampanchayat, Morewadi, Taluka Karvir, District Kolhapur has been restrained by any order or injunction from taking such measures as are permissible in law to stop the illegality or the unauthorized activity. None of the reliefs in terms of prayers (a) to (c) at page 189 have been presently granted. It is in these circumstances the matter was adjourned to enable the counsel for the respondent No.12 to take instructions.

11. On instructions from the respondent No.12, Mr. P.M. Arjunwadkar states that presently in the hostel there are seven students and two are others who have not been able to make any arrangement for their residential accommodation in Kolhapur. They would be inconvenienced if the authorities take measures and particularly co-oercive measures against the respondent No.12. Further, the unauthorized construction / encroachment alleged to have been made, stands removed by the respondent No.12 himself. Thus, on his own, the necessary steps have been taken.

12. Mr. Arjunwadkar assures the Court that in the event the respondent No.12 is unable to obtain any relief in his favour by 30th May, 2016, then, from 1st June, 2016, he shall stop or discontinue the user of the premises in his possession as a hostel to be occupied by boys and girls taking education in and around Kolhapur City. He would stop such commercial user and by which he makes monetary gains in the form of fees / compensation from such students per month for user. Therefore, on his own, this user will be stopped and the premises would be put to such use as are permissible in the bye-laws of the society and the relevant planning and regulatory laws applying and becoming applicable to Grampanchayats and Municipal Corporations.

13. We accept this statement made on instructions by Mr. Arjunwadkar.

14. We do not think that in the light of the pending proceedings and now that the matter has been clarified, any action needs to be taken under the Contempt of Courts Act, 1971.

15. We have passed this order presuming that the direction issued on 28th November, 2014, by a Division Bench of this Court directing the District Collector or Additional Collector to hold an enquiry enables us to take the aforesaid measures.

16. The Report of the District Collector has also been placed on our file.

17. Having perused this Report and the order passed by this Court, we are of the view that nothing further needs to be done.

18. The Report of the inspection dated 16th January, 2015, does not redress any of the grievances of the petitioner nor is it a compliance of the order passed by the Court.

19. We are shocked that instead of inspecting the premises and making a Report to the Court in all seriousness, the Additional Collector has acted very casually and lightly. The order passed by this Court directs the District Collector or any Additional Collector to hold an enquiry. He was to visit the site with prior notice to all concerned parties and to submit a Report to this

Court.

20. We are shocked that this Additional Collector feels that the Court is seeking his guidance or assistance in order to put an end to the matter. He is nobody to tell neighbours how to resolve their disputes or any fights amicably. It is the user which is complained as illegal. The compound height being increased or more trees being planted would, according to this Additional Collector, redress the petitioner's grievance. None had sought his advise with regard to stoppage of any nuisance and which could be caused by even a lawful activity at times. He was called upon to report as to whether the activity is permissible in law and in terms of the bye-laws, rules and regulations applicable to the concerned society. That was after inspecting the premises of both parties. We are, therefore, most unhappy with the Report and hereafter no Court assignment or affairs of the Court and of the aforesaid nature shall be assigned to this Additional Collector. Further, the departmental Secretary, namely, the Principal Secretary in the Revenue and Forests Department shall take note of this Court's orders and the remarks herein and guide the Additional Collectors hereafter as to how the Court's orders have

to be taken and implemented promptly and in letter and spirit.

21. We do not direct any disciplinary action for we hope that this much is enough for correcting an officer as highly placed as an Additional Collector of a District.

B.P. COLABAWALLA, J.

S.C. DHARMADHIKARI, J.