

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.61 OF 2014  
WITH  
NOTICE OF MOTION (L) NO.177 OF 2015

Abdul Kadar Hasanally  
Kachwalla Trust ...Petitioner  
vs.  
Municipal Corporation of  
Greater Mumbai and Others ...Respondents

Mr. S.U. Kamdar, Senior Advocate a/w. Mr. P.K.  
Dakheparkar, Senior Advocate i/b. Ms. M. B.  
Gawde for the Applicant.  
Mr. Kevic Setalwad, Senior Counsel a/w. Mr.  
Awais Ahmedji a/w. Mr. Vinod Mahadik for  
Respondent-BMC.

CORAM : A.S. OKA & A.P.BHANGALE, JJ

DATE : 24TH MARCH, 2015.

P.C.:

1] Heard the learned senior counsel appearing  
for the Petitioner and the learned counsel  
representing the Respondents.

2] The breach alleged in this petition is of  
the judgment and order dated 21<sup>st</sup> December, 2010

passed by this Court in Writ Petition No. 2676 of 1994 filed by the present Petitioner. The said Writ Petition was essentially filed for seeking a writ of Mandamus directing the first Respondent – Municipal Corporation to pay compensation to the Petitioner in terms of the award dated 28<sup>th</sup> September, 1994.

3] By the judgment and order dated 21<sup>st</sup> December, 2010 the Division Bench directed the first Respondent – Municipal Corporation to make payment of the amount due and payable under the award dated 28<sup>th</sup> September, 1994 within a period of three months. Thus, the amount in terms of the award was due and payable by the first Respondent – Municipal Corporation on or before 20<sup>th</sup> March, 2011.

4] The submission of the learned senior counsel appearing for the Petitioner is that Special Leave Petition filed by the first

Respondent against the judgment and order dated 21<sup>st</sup> December, 2010 was dismissed by the Apex Court by an order dated 19<sup>th</sup> July, 2013. He pointed out that even thereafter the compliance was not made by the first Respondent. He pointed out that by wrongful reading of the last paragraph of the order of the Apex Court dated 19<sup>th</sup> July, 2013, in May, 2014 the first Respondent purported to file a Writ Petition in this Court for challenging the award dated 28<sup>th</sup> September, 1994. He pointed out that by judgment and order dated 19<sup>th</sup> January, 2015 the said Writ Petition was dismissed. A Special Leave Petition filed by the first Respondent against the said judgment and order was dismissed on 13<sup>th</sup> March, 2015. He pointed out that though this Contempt Petition was filed on 21<sup>st</sup> June, 2014 and though it was repeatedly adjourned till 26<sup>th</sup> February, 2015, no amount was deposited by the first

Respondent. He, therefore, urged that this is a case of deliberate and willful disobedience of the judgment and order of this Court. He pointed out that the Petitioner which is a Trust is deprived of the amount of compensation due to gross the delay in depositing the amount by the Respondents. He, therefore, submitted that it is a fit case to initiate action against the Respondents under the Contempt of Courts Act.

5] The learned Senior counsel appearing for the Respondents invited our attention to the stand taken by the Respondents in the affidavit in reply and proceeding filed by the Respondents. He submitted that this is not a case of a deliberate or willful breach of the judgment and order of this Court.

6] We have considered the submissions. As

stated earlier, as per the judgment and order dated 21<sup>st</sup> December 2010, time was available to the Respondents to deposit the amount till 21<sup>st</sup> March, 2011. It appears that the Respondents preferred Special Leave Petition No. 8383 of 2011 before the Apex Court against the judgment and order dated 21<sup>st</sup> December, 2010. By an order dated 19<sup>th</sup> July, 2013 the Special Leave Petition was dismissed. The order of the Apex Court reads thus.

*“We are not inclined to interfere with the impugned orders passed by the High Court by which the High Court has directed the implementation of the Award in favour of the respondent-owners. The Special Leave Petition is dismissed. However, the petitioner-Corporation may avail any other remedy as may be open to them under law against the owners.”*

7] By relying upon the last paragraph of the order of the Apex Court, in May, 2014 the Respondents filed Writ Petition No. 1583 of 2014 for challenging the award. The said Writ Petition remained pending till 19<sup>th</sup> January,

2015 and on that day, a Division Bench of this Court dismissed the said petition. The said order was again challenged by the Respondents before the Apex Court and the said petition was dismissed on 13<sup>th</sup> March, 2015.

8] The Special Leave Petition filed by the Respondents against the judgment and order dated 21<sup>st</sup> December, 2010 remained pending till 19<sup>th</sup> July, 2013. It is true that there was a delay on the part of the Respondents in filing the petition for challenging the award assuming that the Respondents were entitled to do so on the basis of the liberty granted by the Apex Court. The petition filed in May, 2014 for challenging the award remained pending till 19<sup>th</sup> July, 2015.

9] In the affidavit in reply filed by Mr. Balchandran Radhakrishnan, Chief Engineer,

(Development Plan) of the first Respondent, a stand has been taken that the first Respondent Corporation being a public body acted in the interests of public at large. It is stated that for this reason, various remedies were adopted by the Municipal Corporation.

10] It is true that there is a delay in deposit of the amount. The first Respondent-Municipal Corporation, considering the amount involved adopted remedies. Writ Petition of 1994 filed by one Petitioner was decided on 21<sup>st</sup> December, 2010. Thereafter, remedies were adopted as stated above. After exhausting all the remedies, the first Respondent complied with the order of this Court. Therefore, the breach can not be said to be deliberate or willful. In any case, this is not a fit case to initiate the contempt proceedings. We may note here that the sum of Rs. 23,84,58,958/-

in terms of the award dated 28<sup>th</sup> September, 1994 was deposited by the Respondents in this Court on 26<sup>th</sup> February, 2015.

11] A notice of Motion has been taken out by the Petitioner seeking permission to withdraw the said amount. Now, the award dated 28<sup>th</sup> September, 1994 has attained finality and therefore, the prayer made by the Petitioner in the said Notice of Motion deserves to be granted. The prayer is that the amount be paid over to Petitioner's assignee D. B. Realty Limited under a Deed of Assignment. The amount can be paid to the assignee by the Prothonotary and Senior Master only after the verification of the Deed of Assignment.

12] Though we are not inclined to take action under the Contempt of Courts Act, 1971, the first Respondent will have to pay the costs of

Rs. 25,000/-. Hence, we pass the following order:

- a) The Contempt Petition is disposed of;
- b) The notice issued on 10<sup>th</sup> November, 2014 is discharged;
- c) The first Respondent shall to pay cost of Rs. 25,000/- to the Petitioner within a period of six weeks from today;
- d) The Petitioner shall get the Notice of Motion (L) No. 177 of 2015 duly registered;
- e) Notice of Motion is made absolute in terms of prayer clause (a) subject to the satisfaction of the Prothonotary and Senior Master of this Court that D.B. Realty Limited is the assignee of the Petitioner entitled to receive the amount payable under the award;
- f) Notice of Motion(L) No. 177 of 2015 is made absolute accordingly;

g) We make it clear that it will be open for the Petitioner to adopt appropriate proceedings in accordance with law on account of the alleged loss caused to the Petitioner due to the default on the part of the first Respondent;

h) We make it clear that we have made no adjudication on the issue whether any loss has been caused to the Petitioner.

(A.P. BHANGALE, J.)

(A. S. OKA, J.)