

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CONTEMPT PETITION NO. 99 OF 2015

IN

WRIT PETITION NO. 1744 OF 1994

Ghanshyam Bansilal Kakraniya

-vs-

Surendra Kambade, acting as Assistant Director Town Planer Municipal Corporation, Amravati

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. G.K.Mundhada, counsel for the petitioner.
Mr. K. S. Narwade, counsel for the respondent.

CORAM : SMT. VASANTI A. NAIK &
A. I. S. CHEEMA, JJ.

DATE : 21.08.2015.

By this contempt petition, the petitioner seeks action against the respondent for deliberate and willful disobedience of the order in Writ Petition No.1744 of 1994, dated 09/06/2004. The petitioner seeks action against the respondent under the provisions of Contempt of Courts Act for refusing to grant the commencement certificate to the petitioner under Section 45(2) of the Maharashtra Regional and Town Planning Act, 1966.

The petitioner had filed Writ Petition No.1744 of 1994 on 13/06/1994 for a declaration that the land of the petitioner was deemed to have been released from reservation as per the provisions of Section 49 of the Maharashtra Regional and Town Planning Act. Certain declarations that were sought by the petitioners were granted by this Court while deciding Writ Petition No.1744 of 1994 by the judgment, dated 09/06/2004. After partly allowing the writ petition, the Rule was made absolute in terms of prayer clause "(c), (f) and (ga)". Prayer clauses "(c), (f) and (ga)" read thus -

“(c) It be held & declared that the acquisition proceedings on the file of the respondent No.2 initiated in pursuance of the notifications dated 09/11/1987 & 20/10/1987 have lapsed under section 11-A, of the land acquisition act.

(f) It be held and declared that there could have been no fresh reservation in the Development plan which came into effect on 25/02/1993 at site No.252 & 253 due to lapse of earlier acquisition proceedings in respect of the same land.

(ga) Hold and declare that the land of the petitioner is released from the reservation under section 48(1) of section 127 of Town Planning Act and the respondent No.4 be restrained from reserving the said land in future.”

It is clear that this Court had granted the declaration that the acquisition proceedings on the file of the respondent and initiated in pursuance of the notifications, dated 09/11/1987 and 20/10/1987 had lapsed under the provisions of Section 11-A of the Land Acquisition Act. It was further declared that there could not have been a fresh reservation in the development plan which came into effect on 25/02/1993. Yet another declaration that the land of the petitioner was released from the reservation under Section 48(1) and Section 127 of the Maharashtra Regional and Town Planning Act was also granted.

It is the case of the petitioner that the petitioner made an application under Section 44 of the Maharashtra Regional Town Planning Act seeking the permission of the respondent for development and also sought the commencement certificate under Section 45(2) of the Act of 1966. According to the petitioner, it was incumbent on the part of the respondent, in view of the relief granted in Writ Petition No.1744 of 1994 to grant a certificate in favour of the petitioner within a period of 30 days. According to the petitioner, the respondent has not taken any action on the

application made by the petitioner under Section 44 of the Act of 1966 and the inaction on the part of the respondent in issuing the certificate in favour of the petitioner is in clear violation of the judgment, dated 09/06/2004.

Shri Narwade, the learned counsel for the respondent, states that the respondent had not rejected the application of the petitioner and the same is under consideration. It is stated that only certain information was sought by the respondent for a proper consideration of the application. It is stated that in the circumstances of the case, the petitioner could not have filed a contempt petition, as there is no violation of any of the directions in the judgment, dated 09/06/2004. It is stated that in fact, no mandamus had been issued against the respondent by the judgment, dated 09/06/2004. It is submitted that since the application of the petitioner is being considered and the reference to the acquisition proceedings was not intentional, it cannot be said that there was willful disobedience of the judgment, dated 09/06/2004.

On hearing the learned counsel for the parties and on a perusal of the judgment, dated 09/06/2004 as also the prayer made in the contempt petition, it appears that the petitioner has abused the process of the Court by filing the contempt petition. The petitioner is desirous of securing permission and certificate under Sections 44 and 45 of the Act of 1966. If the same was not granted in favour of the petitioner by the respondent, the petitioner had other remedies, but the petitioner could not have filed a contempt petition alleging therein that the respondent had willfully and deliberately flouted the judgment, dated 09/06/2004. As we have already recorded herein above, no mandamus is issued to the respondent by the judgment and order, dated 09/06/2004 and certain declarations are granted. If the respondent had not decided the application made by the petitioner in the manner in which the petitioner wanted it to be decided, the petitioner could

have filed appropriate proceedings. The contempt petition is filed with a view to intimidate the respondent and secure the certificate.

At the outset, we had informed the counsel for the petitioner that it is not a matter of contempt, as no directions are issued by this Court in the judgment, dated 09/06/2004 to grant the application and certificate under Sections 44 and 45 of the Maharashtra Regional and Town Planning Act. However, the learned counsel for the petitioner persisted in arguing the matter for more than fifteen minutes. In the circumstances of the case, we impose costs of Rs.10,000/- on the petitioner.

The contempt petition is dismissed with costs of Rs.10,000/-.

JUDGE

JUDGE