

CONTEMPT PETITION NO.99 OF 2013

CIVIL APPLICATION NO.13578 OF 2011

FIRST APPEAL NO.3330 OF 2011

Ashok s/o Bajirao Aher & Ors. = **RESPONDENTS**

Ms.Anjali Dube (Bajpai)Advocate for Petitioner;
Mr. RR Mantri, Adv. For Resp. No.1;
Mr. Sanket S.Kulkarni, Adv. For Resp.Nos.3 & 4;

DATE : 20th July, 2016.

1) Heard. The petitioner has filed the present petition alleging disobedience of the order passed by this Court on 17th November, 2011 in Civil Application No.13578/2011 in First Appeal No.3330/2011. The said order reads thus, -

" Heard. Notice. Mr. Natsu, learned Counsel holding for Mr. Patil, advocate for respondent, accepts notice. Perused the impugned

judgment. In view of the fact that all the issues are answered in affirmative by the Court below, stay to the execution of the impugned order. Interim relief in terms of prayer clause "B" of the application. Civil Application disposed of accordingly"

2) I deem it appropriate to reproduce herein below prayer clause (B) in the aforesaid Civil Application, which reads thus, -

"(B) Pending hearing and final disposal of the present First Appeal, the non-applicant be restrained from alienating the suit property bearing land Survey No. 40/1, Northern side of village Tal. Ambad, admeasuring 5 acres, as described in para 1 of the plaint in Sp.C.S.No.4/2003, by any mode of transfer in favour of third party of."

3) It is the contention of the petitioner that in spite of the aforesaid order being in force, the respondents have proceeded further in

preparing the layout, dividing the subject land into the residential plots and the respondents authorities have sanctioned the said lay out. The learned Counsel further submitted that the order passed by this Court was brought to the notice of all the respondents officers with a request not to proceed further in respect of the subject property.

. The learned Counsel further submitted that during pendency of the suit also, an injunction order was operating and though the suit was dismissed, effect of the injunction order so passed during pendency of the suit, was continued further for the period of next two months.

. The learned counsel further submitted that within the period of two months the appeal was preferred by the present petitioner and in the aforesaid appeal, Civil Application No. 13578/2011 was filed, whereupon this Court was pleased to pass an order on 17.11.2011, thereby staying the execution of the impugned order and

granting interim relief in terms of prayer clause (B), which is reproduced herein above.

. It is the further contention of the learned Counsel that when an injunction order passed by this Court was in operation, at least the Government Officers ought not have proceeded further in respect of the sanctioned layout for the reason that the said act was apparently contrary and in violation of the order passed by this Court. The learned Counsel submitted that all the respondents have thus committed a willful disobedience and default of the order passed by this Court and as such, they are liable to be severely punished in accordance with the provisions of Contempt of Courts Act.

4) Shri Mantri, learned Counsel appearing for Respondent No.1, resisted the submissions made on behalf of the petitioner. The learned Counsel submitted that in the affidavit in reply filed by Respondent No.1, a categorical statement has been made by him that not a single inch of

land of the subject property has been alienated by him in the name of third party after passing of the impugned order and as such, no contempt, as alleged by the petitioner, can be said to have been committed by Respondent No.1.

. The learned Counsel further submitted that in so far as other aspects are concerned, the subject property was mutated in the names of family members of Respondent No.1 in the year 2010 and the present petitioner has carried out separate proceedings challenging the said orders and in the said matters, the mutation entries and the order of creating separate Property Register Cards (PR Cards) in the name of the family members of Respondent No.1, has been confirmed up to the level of the concerned Minister. The learned counsel submitted that whatever lay out has been done is being done in accordance with law and Respondent No.1, in no way, has violated the interim order passed by this Court.

5) Shri Kulkarni, learned Counsel appearing

for Respondent Nos.3 and 4 submitted that except submitting the factual report to the Town Planner, nothing has been done by Respondent Nos. 3 and 4 and they were, in fact, no way concerned with the order passed by this Court. As such, no violation on their part can be alleged and in fact there is no such allegation in the petition also against these respondents.

6) Though Respondent Nos.5 and 6 are duly served, none has appeared on their behalf today.

7) After having heard the learned counsel appearing for the respective parties and on perusal of the impugned order and more particularly the order of which disobedience is alleged by the petitioner, apparently it does not appear to me that any case is made out for holding the respondents guilty or even for initiating any action under the provisions of Contempt of Court's Act. Nothing has been brought to my notice by the petitioner to show

that in violation of the order passed on 17.11.2011, the subject property, in any way, has been transferred by Respondent No.1. Creating a layout and finalization of layout cannot be in any case said to be a transfer of the land or alienation of the land.

8) In so far as contention of the petitioner that during pendency of the suit, though there was an order of injunction, mutation entries were carried out and names of family members of Respondent No.1 were recorded, it is to be stated that separate proceedings have been initiated by the petitioner to challenge the said mutation entries and the material on record shows that such proceedings are under consideration of the revenue authorities. I have already reproduced the order of which disobedience is alleged in the present Contempt Petition. I reiterate that, nothing has been brought to my notice so as to draw an inference or to reach to any conclusion that the said order has been in

any way violated by the respondents. In the circumstances, I do not find any substance in the Contempt Petition. It is, therefore, liable to be dismissed and is accordingly dismissed.

9) Though Shri Mantri, learned counsel appearing for Respondent No.1 was persuasive in submitting that exemplary costs be awarded to the respondents for initiating a false contempt proceedings and thereby abusing the process of the Court, I am not inclined to pass any such order. It appears that it was the bonafide belief of the petitioner that the order is being violated and as such, attempt was made to bring to the notice of this Court the said fact with a request for initiation of the contempt proceedings. As such no order as to the costs.

(P . R . BORA)
JUDGE

bdv/