

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CONTEMPT PETITION NO. 724 OF 2015

Mohammad Naeem s/o Mohammad Isaq ,
Age 53 years, occup. retired govt.servant
R/o Ajab Nagar, Tal. & Dist. Aurangabad .. Petitioner

versus

Shri Omprakash Bakoriya,
Municipal Commissioner,
The Aurangabad Municipal Corporation,
Aurangabad .. Respondent

Mr. Fayaz K. Patel, Advocate for petitioner
Mrs. Manjusha A. Deshpande, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 1st December, 2016

ORAL JUDGMENT:

1. Heard Mr. Fayaz K. Patel learned counsel appearing for the contempt petitioner and Mrs. Manjusha A. Deshpande, learned counsel appearing on behalf of the respondent.

2. While it appears that this court has in its' order order dated 21-10-2015 passed in second appeal no. 546 of 2014 recorded submissions of appellant-present contempt petitioner reading thus;

" 6) *The learned counsel for the appellant submitted that even when the first appellate Court has granted decree of declaration and injunction in favour of the plaintiff in the previous suit, due to*

order of stay granted by this Court in Second Appeal No. 284 of 2002 the original defendant has done some mischief and he has virtually closed the aforesaid western lane situated in City survey No. 14248 and as that lane is in existence in city survey map and apparently there is no other way to approach the property of the plaintiff at present, something needs to be done in that regard. Even the local body could not have approved the plan in favour of defendant which would have closed that lane. It is open to the present appellant plaintiff to approach the local body for removal of that construction and for opening the lane again. The lane is to be as per the width shown in city survey map. Relief of aforesaid nature is granted in the civil application filed by the appellant. That application is disposed of. Authenticated copy be given to both sides. Both the appeals will be heard together. " ,

the contempt petitioner purports to contend that after said order had been passed there had been several representations to respondent-corporation for removal of construction, however, there is no response nor any action pursuant to such representations has been taken. According to learned counsel this, in his estimate, may amount to contempt of court since there is underlying intention in the order that the corporation would act upon representations.

3. The contempt petitioner has not produced on record, copy either of the civil application or order passed thereon as has been referred to in paragraph no. 6 of the order dated 21-10-2015 reproduced hereinabove.

4. Learned counsel for the respondent Mrs. Deshpande, however, submits that even going by the order as has been

passed in the second appeal which is referred to hereinbefore, it would not appear that either there is express or even a tacit instruction and much less directions to the corporation to act according to the representation that would be filed.

5. Accordingly to learned counsel for the respondent, it is only an opening that had been given to contempt petitioner to approach the corporation. It is not a case that any mandatory direction had been issued against the corporation. The contempt petitioner may have other avenues open if he considers that some action be taken pursuant to his representations but, contempt petition would not lie.

6. I find quite some force in the submissions on behalf of the respondent, taking into account order dated 21-10-2015 as has been passed in second appeal no. 546 of 2014 and annexed to the contempt petition, alleging its contempt.

7. The contempt petition, as such, is not sustainable and thus stands dismissed.

SUNIL P. DESHMUKH,
JUDGE

pnd