

JPP

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

***WRIT PETITION NO.42 OF 1986
with
CIVIL APPLICATION NO. 2121 OF 2014***

Sitaram Kisan Wagh

(Since deceased by his heirs and L.Rs.)

1(a) Smt. Jankibai Sitaram Wagh.

Aged 45 years, Occupation Household,
residing at House No. 4220, near
Kalaram Mandir, Panchavati,
District – Nasik.

1(b) Smt. Asha Prakash Sharma,
aged 32 years, residing at 546,
Beedi Kamgar Society, Panchavati,
District – Nasik.

1(c) Smt. Kalpana Yashwant Hemade,
aged 29 years, residing at 509,
Beedi Kamgar Society, Panchavati,
District – Nasik.

1(d) Shri Umesh Sitaram Wagh,
aged 25 years, residing at House
No. 4220, Near Kalaram Mandir,
Panchavati, Nasik,
District – Nasik.

... Petitioners/Applicants.

V/s.

1. Mr. Madhukar Narayan Saraph,
Occu. Service, Residing at Manpada
Road, Shantabai Niwas, Dombivli (E),
District – Thane.
Now residing at – near Ichhami Mandir,
Upanagar, Harshal Communication,
Upanagar, Nasik, District – Nasik.
 2. Business Bay Premises Co-op. Housing
Society Limited through
Sharad Chhotalal Shah, adult,
Occupation Business, resident of
Plot No. 129, Shri hari Kute Marg,
Near Chandak Circle, Tidke Colony,
Nasik.
 3. Ojas Developers through Proprietor
Aniket Anant Patil by Constituted Attorney
Shri Anant Mohimiraj Pagil, age 55,
Occupation : Business/Agriculture,
residing at Dwarka Sabanivasi Society,
Rajiv Nagar, Nasik. ... Respondents.
- Mr. C.G. Gavnekar a/w. Suhas Deokar for the
Petitioners/Applicants.
Mr. Girish Agrawal for Respondent 1.
Mr. Sujay Gangal for Respondents 2 and 3.

CORAM : N.M. Jamdar, J.

08 December, 2016.

Oral Judgment :-

By this Writ Petition the Petitioners have challenged the judgment and order passed by the Civil Judge, Junior Division,

Nasik dated 20 July 1982 in Regular Civil Suit No. 993 of 1976 and the judgment and order passed by the District Judge, Nasik dated 16 October 1985 in Civil Appeal No. 309 of 1985.

2. By the impugned orders the Petitioners, who are the tenants have been directed to vacate the suit premises. The suit premises are rooms in respect of which the Petitioners were monthly tenants at the rate of Rs.8/- per month. Notice was issued by the Respondent – landlord on 22 September 1976 on the ground that the Petitioners had not paid the rent since 2 October 1975. It was also alleged that the Petitioners had raised permanent construction and carried out material alterations in the suit premises. The learned Civil Judge held that the Petitioners have committed default in payment of rent and accordingly directed the Petitioners to hand over vacant and peaceful possession of the suit premises. In the Appeal filed by the Petitioners was dismissed and this order was confirmed. Thereafter, the Petitioners filed the present Writ Petition in which Rule was issued on 26 November 1986 and interim relief staying the execution of the decree was granted.

3. A Civil Application No. 2121 of 2014 was taken out by the Petitioners placing on record that the Petitioners have been dispossessed pursuant to Darkhast proceedings taken out by the Respondents. It was stated that the Original Petitioner had expired

on 2 May 2013 and when the Applicant No.1C – her daughter visited the suit premises, it was found that some lock was put up by the Respondents. It was also placed on record that the structures were demolished and in the Civil Application the Petitioners sought re-construction of the premises, damages to the tune of Rs.1,50,000/- and to initiate contempt proceedings against the Respondents. In this Civil Application an order was passed on 17 July 2015 whereby the Court recorded that prima-facie case of infringement of the interim order passed by this Court on 26 November 1986 and accordingly initiated the proceedings under the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India. Since it was placed on record by the Respondent that the Municipal Corporation had demolished the premises for the purpose of Kumbhamela, and TDR in lieu of the demolition which was carried out has been given to the Respondent, the Court directed the Respondent to deposit the amount of Rs.7,00,000/- which was stated to be received in lieu of that TDR.

3. The amount has been deposited in the Registry of this Court. The Respondent has filed his affidavit in reply to which a rejoinder is also filed.

4. I have heard Mr. Gavnekar, learned Counsel for the Respondents and Mr. Girish Agrawal, learned Counsel for Respondent No.1.

5. Mr. Agrawal, learned Counsel for Respondent No.1 at the outset has tendered an unconditional apology on behalf of his client. He states that this unconditional apology is also reiterated in the affidavit. Mr. Agrawal submitted that certain mitigating factors be taken note of such as the status of the matter on the website of the Court and that the Petitioners had also not raised any contention regarding the continuance of interim relief when decree was executed. He submitted that it is now impossible to reconstruct the property in view of action taken by the Municipal Corporation in the meanwhile. Mr. Agrawal submitted that this shows bonafide pursuant to the order of this Court, an amount of Rs.7,00,000/- received from the Corporation has been deposited in the Court and the Respondent is ready and willing to pay monetary damages to the Petitioners for the inconvenience they have suffered. He submitted that in view of the stand of the Respondent, further proceedings be not taken by the Court. Mr. Gavnekar, learned Counsel for the Petitioners submitted that the matter is between the Court and the Respondent – Contemnor, but accepted the position that it is now not possible to reconstruct the premises and submitted that the stand taken by the Respondent to hand over monetary damages is fair and an affidavit to that effect is also filed by the Petitioners.

6. That the decree has been executed when the interim order of this Court was operating is a fact. Though the status report

on the website of this Court indicated that the matter is disposed of that is not the order of the Court but only the status as indicated. From that directly the Respondent could not have inferred that the interim relief stands vacated without further checking the actual order passed. It is not that the Respondent is an illiterate person and therefore, the Respondent ought to have taken greater care before proceeding only on the basis of a status report. However, since the outcome of the proceedings under the Contempt of Courts Act may have consequences of penal nature may ensure, the surrounding factors will also have to be taken note of. Once such factor is that the Petitioners did not controvert the assertion that the interim relief does not continue when the decree was sought to be executed, further factor is that by an act of third party that is the Municipal Corporation, the premises have been demolished. The Respondent No.1 is a Senior Citizen and has retired from services. Mr. Agrawal, on instructions has submitted that the Respondents will pay Rs.2,50,000/- as damages to the Petitioners which the learned Counsel for the Petitioners is not averse to. Considering the totality of the circumstances, the gesture of the Respondent to take mitigating steps of payment of damages and the unconditional apology tendered and the impossibility to reconstruct the premises, the proceedings need not result in an order of penal nature. However, it will have to be placed on record that the conduct of the Respondent is not approved and the Respondent will be well advised

to be careful in future in respect of the Court orders.

7. The Respondent No.1 has deposited an amount of Rs.7,00,000/- in this Court. Therefore, in view of the statement made by the learned Counsel for the Respondent No.1, the Petitioners will be entitled to withdraw an amount of Rs.2,50,000/-. As far as remaining amount is concerned, the Respondent No.1¹ is entitled to withdraw the same with accrued interest, if any.

8. The learned Counsel for the parties jointly state that as far as that challenge to the impugned judgment and decree in the Writ Petition, in view of the subsequent developments narrated above, does not survive. Accordingly, both the Writ Petition as well as Civil Application are disposed off. Rule discharged. No costs. Contempt Notice stands discharged.

(N.M. Jamdar, J.)

¹ Corrected pursuant to the order dated 29/08/2017 on the praecipe for Speaking to Minutes.