

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

***CONTEMPT PETITION NO. 175 OF 2013***

***IN***

***APPEAL FROM ORDER NO. 726 OF 2011***

Mrs.Pritpalkaur Gajendrasingh Kochar,  
At Shop No.1/101, Clanfield CHS Ltd.,  
Old Lokhandwala Complex,  
Andheri (W), Mumbai – 400 053.

... Petitioner

v/s

Municipal Corporation of Gr. Mumbai & 2 ors. ... Respondents

Mr.Rupesh Lanjekar i/by A.G.Damle for the petitioner.

Mr.S.A.Sawant along with A.V.Diwate for the respondent B.M.C.

***CORAM: N.M. JAMDAR, J.***

***DATED : 29 MARCH 2016***

***ORAL ORDER:***

By this contempt petition, the Petitioner seeks an action against the Respondents under the Contempt of Courts Act, 1971, for committing violation of the order dated 9 August 2011, passed by this Court.

2 By an order dated 9 August 2011, the Appeal from Order No.726 of 2011 filed by the Appellant, was disposed of as withdrawn since the Appellant had sought leave to make an

application to the Municipal Corporation for regularization of the structure. It was also directed that, till the application is disposed of, the Municipal Corporation will not act upon the impugned notice of demolition.

3 Learned counsel for the Appellant submitted that the application for regularization was made within the time stipulated by this Court and it was duly acknowledged. He submitted that the application for regularization was rejected by the Respondent Corporation on 13 August 2012, but before disposal of the application, the structure was demolished on 2 May 2012.

4 The Sub-Engineer, K/West Ward, has filed an affidavit in reply. It is asserted on oath that the demolition was carried out after the disposal of the application on 13 August 2012 by pasting the order on the site on 17 August 2012. It is asserted that the structure was not demolished on 2 May 2012.

5 The question therefore is, whether the structure was demolished on 2 May 2012, as contended by the Petitioner.

6 The Petitioner has relied upon the noting in the record of the Municipal Corporation obtained under the Right to Information Act, which contains an endorsement of demolition on 2 May 2012. It is a stand of the Respondent Corporation that this endorsement is by way of mistake. The parameters of the contempt jurisdiction must be kept in mind. What will have to be seen is, whether the

stand taken by the Respondent Corporation is impossible and it can be said with certainty that the structure was demolished on 2 May 2012.

7 The assertion of the Petitioner will have to be seen in the light of surrounding circumstances. If the Petitioner knew that his structure is being demolished on 2 May 2012, even though his application was not disposed of, the Petitioner would have made grievance to the authorities and would have approached the court of law immediately. It is not believable that the Petitioner will come to know that his own structure is demolished on 2 May 2012 only when the Petitioner saw an entry in the record of the Municipal Corporation pursuant to the application under the Right to Information Act. The contempt petition is filed in February 2013 i.e. almost after nine months from May 2012. The Petitioner could have produced other material to show that the structure was indeed demolished on 2 May 2012. Therefore, the conclusion cannot be drawn with certainty that the structure was, in fact, demolished on 2 May 2012, so as to invoke the provisions of Contempt of Courts Act and take punitive action against the Respondents.

8 It is informed that the Petitioner has now filed a suit challenging the action of the Corporation in rejecting the application for regularization, and has taken out a notice of motion. It is clarified that, while rejecting the contempt petition, and

commenting on the factual situation, this court has kept in mind the parameters of the contempt jurisdiction and the contentions of the parties in the pending suit are kept open.

9      The contempt petition is rejected.

*( N. M. JAMDAR, J. )*