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

CONTEMPT PETITION NO. 189 OF 2015

Kalpana Kamlesh Patadia .. Petitioner
Vs.
Sitaram Kunthe,
Municipal Commissioner of Gr. Mumbai & Ors. .. Respondents

**WITH
CONTEMPT PETITION NO. 190 OF 2015**

Kamlesh Jayantilal Patadia .. Petitioner
Vs.
Sitaram Kunthe,
Municipal Commissioner of Gr. Mumbai & Ors. .. Respondents

Mr. Rajesh Kachare a/w. Ms. Savita Sawalkar i/b M/s. Tamhane & Co. for
the Petitioners.

Mr. N. V. Walawalkar a/w. Mrs. Madhuri More for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th AUGUST, 2016.

ORAL JUDGMENT

1. As both these contempt petitions raise common question of fact and law and arise out of one and same order passed in two different suits, they are being heard and decided together by this common Judgment.

2. The petitioner in Contempt Petition No. 189 of 2015 is the wife of petitioner in Contempt Petition No. 190 of 2015. They are the

owners of the flats bearing Nos. A-11 and A-6 situated on the second floor of the New Chandraoday Co-operative Housing Society Ltd. as specifically mentioned in the cause title of the suits. Both the flats had 180 sq. ft. terrace each, adjoining to the flats. Both the petitioners covered their respective terraces with asbestos sheets. In respect of this coverage of the terraces, Municipal Corporation was pleased to pass an order dated 23.04.2013 for demolition of the unauthorized covering of the terraces. The petitioners, hence, filed two separate suits bearing L.C. Suit No. 2477 of 2013 and Suit No. 2476 of 2013, inter alia, praying for permanent injunction restraining respondent-Municipal Corporation from implementing the impugned order dated 23.04.2013. Along with suits, the petitioners filed Notices of Motion Nos. 2303 of 2013 and 2304 of 2013 seeking relief of interim injunction. In those Notices of Motion ad interim relief was rejected. The petitioners, therefore, preferred the appeals against the order and in those appeals the ad interim relief was granted by this Court on 24.05.2013 in terms of prayer clause (b). The said relief was confirmed by this Court by order dated 19.09.2013 and directed to be continued till the disposal of the Notices of Motion by the Trial Court.

3. The grievance of the petitioners is that despite this order of interim injunction granted and confirmed by this Court till disposal of the Notices of Motion and despite the fact that the Notices of Motion are yet not disposed of and pending before the Trial Court, the respondent herein

issued notice dated 28.11.2014 under Section 53(1) of the MRTP Act calling upon the petitioners to restore their flats to original status, in accordance with the plan approved by the Executive Engineer while sanctioning the building proposal. Subsequent thereto, on 11.03.2015 the petitioners also received notice under Section 488 of the Mumbai Municipal Corporation Act, intimating the petitioners that the Assistant Engineer (B & F)-I, 'N' Ward shall visit the premises of the petitioners on 13.03.2015 for the purpose of inspecting and taking measurement of unauthorized work, if any. According to the petitioners, therefore, the respondent-Municipal Corporation has committed breach of the ad interim relief granted by this Court on 24.05.2013 and confirmed on 19.09.2013. Hence, according to the learned counsel for the petitioners, the respondent is liable for intentionally, willfully and consciously disobeying the order of this Court.

4. Both these petitions are resisted by the learned counsel for the respondent by placing reliance on the pleadings in the suit filed by the petitioners and also on the various orders passed by this Court and by the Commissioner of Mumbai Municipal Corporation.

5. Having heard the learned counsel for the petitioners and the respondent herein, I find much substance in the submission advanced by the learned counsel for the respondent that there is absolutely no question

of respondent committing the breach or disobedience much less willful or intentional, of the order passed by this Court. The reasons for the same are as under :

The order of ad interim relief was passed by this Court on 24.05.2013 in terms of prayer clause (b). The prayer clause (b) of the Notice of Motion filed by the petitioners in the Trial Court states as follows:

"(b) that pending the hearing and final disposal of this Suit, the Defendants, their servants, agents, officers and any person or persons acting under or through them be restrained by a temporary order of injunction of this Hon'ble Court from taking any action pursuant to the impugned order dated 23rd April 2013 to the extent of its affects the right of the Plaintiff in respect of the suit property;"

6. The Notices of Motion make it clear that by the said prayer clause, petitioners had sought the relief of injunction restraining the Municipal Corporation from taking any action pursuant to the impugned order dated 23.04.2013 passed by the Municipal Commissioner in respect of the suit property. Para No.1 of the plaint in the suit reveals that in the said suit, the plaintiffs have described that the "180 sq. ft. terrace covered with asbestos sheets" as the suit property. It is clear that, therefore, the ad interim relief was sought and granted only in respect of the "unauthorized covering of the terrace". The said ad interim relief was continued till the disposal of the Notices of Motion by this Court vide its order dated 19.09.2013. It is pertinent to note that the order of the Commissioner of Municipal Corporation dated 23.04.2013, which was

challenged by the petitioners in the said suit also, pertains to the unauthorized covering of terraces belonging to the petitioners, calling upon the same to be demolished after inspection.

7. Therefore, it is crystal clear that the only relief sought by the petitioners in the said suit was in respect of restraining the Municipal Corporation from demolition of unauthorized covering of 180 sq. ft. terraces, pursuant to its order dated 23.04.2013.

8. Now, the notice, which is issued by the Municipal Corporation and which is produced in these petitions at page No.26, reveals that the said notice is issued under Section 53(1) of the MRTP Act, calling upon the petitioners to remove the unauthorized work and development carried out in the said flat in respect of the 5 items, namely, (1) Amalgamation of two flats bearing Nos.06 & 11 by removing common wall, (2) Wall between living room and balcony is removed in flat Nos.06 & 11, (3) Wall constructed in living room of flat No.11, (4) Bath and W.C. merged in flat Nos.06 & 11 and (5) Kitchen merged in flat No.06. By this notice under Section 53(1) of the MRTP Act, the petitioners were called upon to restore the flat Nos.A-06 & 11 to its original status, in accordance with the plan approved by the Executive Engineer on 05.07.2001, by removing the unauthorized work, as referred in the said notice, which pertains to the particular 5 items only. By the notice, issued under Section 488 of the

MMC Act on 11.03.2015, the Assistant Municipal Commissioner was directed to inspect the suit premises and to take measurement of unauthorized work referred in this notice.

9. Thus, it is apparent and very clear that this notice issued under Section 53(1) of the MRTP Act and notice under Section 488 of the MMC Act are totally in respect of different unauthorized constructions, than the unauthorized covering of terraces, in respect of which, order dated 23.04.2013 was passed and which order was challenged and respondent-Corporation was restrained from taking any action in pursuance of the said order. These two notices do not even mention and even remotely not connected to the unauthorized coverage of terraces. These notices issued by Municipal Corporation refer to different unauthorized work carried out by the petitioners in their flats.

10. In view thereof, there is absolutely no question of respondent-Corporation committing the breach of the order passed by this Court, far remain, willfully or intentionally. The order passed by this Court refers to unauthorized covering of terrace; whereas the notice issued by Municipal Corporation refers to different unauthorized works carried out by the petitioners in their flats.

11. Both the petitions, therefore, alleging contempt on the part of

the respondent, are totally misconceived. It appears that under the garb of filing these petitions, alleging the contempt, the petitioners have carried out further unauthorized construction and now want to stall the process of the demolition of the said unauthorized work. Both the petitions, therefore, need to be dismissed and accordingly stand dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]