

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

CONTEMPT PETITION NO.244 OF 2012

Smt.Nilam Maithani and Others .. Petitioners

vs.

M/s.Atharva Buildcom and Others .. Respondents

Mr.Nikhil Pujari i/b Mr.PN.Joshi for the petitioner

Mr.M.M.Sathaye for the respondent nos.1 and 2

CORAM : K.K.TATED, J.
DATED : 19/01/2016

PC:

1 Heard the learned counsel for the parties.

2 By this Contempt Petition the petitioner allege that the respondent violated the order dated 8.12.2010 passed by learned District Judge-5, Nasik in Misc. Civil Appeal No.118 of 2010. The operative part of the said order reads thus:

- “1. The appeal is hereby allowed.
2. The order dated 28/10/2010 passed below Exhs.5 and 28 in Regular Civil Suit No.156 of 2010 by learned Jt. Civil Judge, Senior Division, Nashik is hereby set aside.
3. Application Exh.5 filed by the plaintiffs is hereby allowed.
4. The defendant nos.1 and 2 are hereby restrained from carrying out any construction in the suit property described in para-1 of the plaint except in accordance with original sanctioned map dated 29/07/2006 till final disposal of the

suit.

5. The defendant nos.1 and 2 are further restrained from causing any change or alteration in the space so reserved for parking, garden and gates for entry as shown in the map dated 29/07/2006 till final disposal of the suit.

6. The defendant nos.1 and 2 are further restrained from causing any obstruction to the plaintiffs for their ingress in and egress from the suit property from the space so provided for the road in the map dated 29/07/2006 till final disposal of the suit.

7. Costs in cause.”

3 It is the case of the petitioner that though the Trial Court restrained the respondents from carrying out any construction activities other than the sanction map dated 29.7.2006, the respondent filed Declaration Under Apartment Ownership Act Form - A dated 23.9.2011 and also applied for Part Completion Certificate (Form - J) dated 26.9.2011. In this way, the respondents committed the contempt of the order passed by district court dated 8.12.2010. In support of this contention, the learned counsel for the petitioner relies on paragraph 4 and 5 of the Contempt Petition. He submits that as the respondent violated the order passed by Trial Court, the action against them be initiated under the Contempt of Court Act.

4 On the other hand, the learned counsel for the respondent vehemently opposed the present Contempt Petition. They filed Affidavit-in-Reply dated 28.10.2015. In the said affidavit respondent specifically stated that they have not carried out any construction activities other than the sanction map dated 29.7.2006. In support of this contention, the learned counsel for the respondent relies on paragraph 4 of their Affidavit-in-Reply which reads thus:

“4. With reference to para No.4 of the Contempt Petition, the deny that with malafide intention, Respondents have breached Order dated 8/12/2010. I say that the action of declaring the subject matter building as apartment under Deed of Declaration of Apartment Ownership dated 23/09/2011, in itself is not breach of Order dated 08/12/2010. Under the said Order, respondents are only restrained from carrying out construction in the suit property except in accordance with original sanctioned map dated 29/07/06 till the disposal of suit and from causing any change or alteration in the space so reserved for parking, garden and gates as shown in map dated 29/07/06 till disposal of suit and from causing any change or alteration in the space so reserved for parking, garden and gates as shown in map dated 29/07/06 till disposal of the suit and from causing any obstruction to Plaintiffs for their ingress and egress from the suit property from space so provided for road in the said map dated 29/07/06 till disposal of the suit. This Order nowhere restrains the Respondents from executing a Deed of Declaration of Apartment Ownership as made and executed by them on 23/09/2011. I deny that execution of this deed dated 23/09/2011 is clear breach of Order of Hon'ble District court dated 08/12/2010. The said document dated 23/09/2011 is a registered, legal document executed after following the due process under Apartment Ownership Act and the same cannot be interpreted as breach of Order dated 08/12/2010. The Respondents are neither constructing nor changing nor altering any space as per revised plan dated 09/12/2010 nor obstructing the Plaintiffs in their ingress and egress from the space provided for road in the original sanctioned map dated 29/07/2006.

5 The learned counsel for the respondent further submits that there is no restrain order against the respondent for compliance of the provisions of the Maharashtra Ownership Act 1970 and or applying for completion certificate. He submits that bare reading of the order dated 8.12.2010 shows that the court has restrained the respondent from carrying out any construction activities except in accordance with the original sanction map dated 29.7.2006 till the disposal of the suit. He

further submits that the present petition is filed by the petitioner just to bring pressure on them though they have not violated any order passed by District Court. Hence, same be dismissed with costs.

6 I have heard both the side at length. It is to be noted that bare reading of the order dated 8.12.2010 shows that the district court restrained the respondent from carrying out any construction activities except in accordance with the sanction map dated 29.7.2006 till the hearing and final disposal of the suit. No where it is stated in the said order that the respondent should not comply with the provisions of Maharashtra Ownership Act, 1970 and or to apply for completion certificate. In the entire petition, no where petitioner has made any averments that the respondent carried out any construction activities in violation of the orders dated 8.12.2010. This itself shows that the petitioner has filed the present Contempt Petition just to bring pressure on the other side.

7 Considering these facts, I do not find any substance in the present petition. As the petition is filed just to bring pressure on the other side, same is dismissed with cost of Rs.10,000/-. Cost to be paid to the respondent or their advocate within four weeks from today.

(K.K.TATED, J.)