

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 364 OF 2012

Nagrik Seva Mandal & Anr. ... Petitioners
Vs.
Jabirali Mazharali Syed & Ors. ... Respondents

Mr. A.N. Maniyar, Advocate for the petitioners.
Mr. C.S. Doveson i/b. Mr. Abdul Latif Chaudhari, Advocate for respondent
nos. 1 to 5.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **22nd February, 2016.**

P.C.:

This Contempt Petition is directed against the respondents for their willful disobedience of the order dated 8th September, 2003 passed by this Court in Civil Application No. 2815 of 2003 in First Appeal No. 1141 of 2003. By the said order, this Court has granted relief in terms of prayer clause (b) in the said Civil Application. In prayer clause (b), a prayer was made to stay the judgment and decree dated 30th May, 2003 passed by the Joint District Judge, Thane in Regular Civil Suit No. 1 of 1987. The suit filed by the plaintiff in respect of removal of trustees and settlement of scheme of the trust was partly decreed and original defendant nos. 2 to 4 are removed from their respective post of President, Vice-President, Secretary and also from the trusteeship of Nagrik Seva Mandal trust, Nayi Basti Kalyan Road, Bhiwadi from the date of decree. Defendant no. 4- Jagdish Ramalu Pendam is present petitioner no. 2 and he was working as

a Secretary at the relevant time. As per the judgment and order dated 30th May, 2003 petitioner no. 2 was removed from the post of Secretary but the said order was stayed by this Court by an order dated 8th September, 2003.

2. It is the case of the petitioners that though there was stay to the removal of petitioner no. 2 from the post of Secretary, the respondents illegally removed him from the post of Secretary of the Trust and have committed the contempt of the order of this Court, therefore, they be held guilty under Contempt of Courts Act.

3. The respondents/contemnors appeared in the proceedings and filed their joint reply in February, 2013 denying contempt on their part.

4. The learned counsel for the petitioners has submitted that the petitioner no. 2 was working as a Secretary of the said trust and the respondents/contemnors have removed him from the post of Secretary by taking an advantage that interregnum the First Appeal was dismissed. He submitted that the Appeal was dismissed on 2nd March, 2006, however, it was restored on 12th February, 2007 and the respondents had knowledge of the restoration of First Appeal, as the counsel of the petitioners sent legal notice to the respondents specifically stating that the Appeal is restored and

thereby interim orders are also restored and they are in force.

5. The learned counsel for the respondents/contemnors, while replying to the submissions, has submitted that the respondents did not commit any contempt. Petitioner no. 2 continued to work as a Secretary pursuant to the order of stay dated 8th September, 2003. Thereafter, in the year 2005 he contested election for President-ship and was elected as President on 2nd February, 2005. He further submitted that thereafter he continued on the said post, however, in the year 2011 he was indulged into malpractices and there was some illegal construction, so the action was taken against him in the year 2011 and he was put behind the bars for two months. Thereafter as per the rules, next election was declared, however, the petitioner could not contest the election, as the office was vacant from October, 2011. Thus, the respondents have not committed any breach of the order passed by this Court.

6. Perused the documents produced by the parties. By the order dated 8th September, 2003, there was a stay to the order of removal of petitioner no. 2 from the post of Secretary. It remained in force till 2nd March, 2006 till the First Appeal was dismissed, however, on 12th February, 2007 it was restored along with the interim order. However, no such incident of

removal of the petitioner has taken place from 1st March, 2006 to 12th February, 2007. The submissions of learned counsel for the respondents that the petitioner was elected earlier on 2nd February, 2005 and became President is relevant, as it shows that no action was taken by the respondents to remove the petitioner from the post of Secretary for which there was a stay by this Court. Thus, he himself left the post of Secretary and got elected to the post of President. As soon as he became the President, the order of stay has lost its force. Subsequently, he remained in the post of President till 2011. It appears that the petitioner did not contest the election and other persons who contested the election got elected. I do not find that there is any willful disobedience of the order of this Court. Hence, the Contempt Petition is dismissed.

(MRIDULA BHATKAR, J.)