

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

CONTEMPT PETITION NO. 2 OF 2015
IN
CIVIL APPLICATION (STAMP) NO. 29091 OF 2014
IN
APPEAL FROM ORDER (STAMP) NO. 21162 OF 2014

Mr. Iqbal @ Mohammed Iqbal Khan ...Petitioner

Versus

The Chief Officer & Ors. ...Respondents

.....

Mr. Lulia Vasher Tikamdas for the Petitioner.

Mrs. Sharmila U. Deshmukh for Respondent Nos.1 to 3.

Mr. Sanjay Kadam a/w. Ms. Apeksha Sharma i/b Kadam & Co. for
Respondent No.4.

CORAM : G. S. KULKARNI, J.

Date of reserving the Order : 25.04.2016

Date of pronouncing the Order : 26.04.2016

ORDER

1. The petitioner is stated to be plaintiff No.10 in S. C. Suit No. 2160 of 2014 instituted before the City Civil Court at Mumbai (for short "the said Suit") who has filed this Contempt Petition making the following prayers:

(a) The respondents 1 to 4 be punished for committing breach and contravention of Order of Hon'ble Supreme Court dated 17/10/2014 annexed as Exhibit "C" hereto and Order dated 07/11/2014 of this Hon'ble Court annexed Exhibit "H" to an order to detain the Respondents 1 to 4 for period of 6 months in

Jail or any other term as this Hon'ble Court may deemed fit and proper;

(b) The costs of this petition be awarded to the petitioner;

(c) This Hon'ble Court will be pleased to grant such further and other relief as the circumstances of the case may demand.

2. It is the case of the petitioner that the petitioner was occupant of premises namely room No.4 in property bearing Nos. C.S. Nos. 1191, 1/1191, 2/1191, 1192, 1193, 1194 of Girgaon Division, M. S. Ali Road, Sheetal Estate, Grant Road, Mumbai - 400 007. A notice was issued by the Maharashtra Housing Area Development Authority under Section 95/A of the Maharashtra Housing Area Development Act, 1976 (for short "the MHADA Act") seeking eviction of the occupants/tenants of the said premises. Respondent No.4 who is the landlord had obtained no objection certificate for redevelopment of the said property under Regulation 33(7) of the Development Control Regulation for Greater Mumbai.

3. In the said suit instituted by 19 plaintiffs out of which the petitioner was plaintiff No.10, a Notice of Motion was taken out for ad interim reliefs to prevent the officers of MHADA and respondent No.4-landlord from enforcing the notice issued under Section 95/A and evict the plaintiffs by enforcing the said notice dated 18.07.2014. According to the petitioner an ad interim relief was granted by the

Trial Court on 01.08.2014, whereby the learned Trial Judge directed not to dispossess the plaintiffs from the suit premises till the decision of the Notice of Motion. This order was assailed by the landlord-respondent No.4 before this Court in Appeal from Order (Stamp) No. 21162 of 2014. By an order dated 12.09.2014, ad interim order dated 01.08.2014 passed by the Trial Court was set aside. The relevant observations in the order passed by this Court are contained in para 31 to 35 which read thus:

31. In the light of the tests laid down by the aforesaid decisions, if the facts of the present case are considered, I find that the learned trial Judge has exercised the discretion arbitrarily or capriciously or perversely. I also find that the trial Court has ignored settled principles of law regulating grant or refusal of interlocutory injunctions. In the facts and circumstances of the present case, I find that the learned trial Judge has not exercised the discretion reasonably and in a judicial manner. For all these reasons, the impugned order cannot be sustained and is, therefore, liable to be quashed and set aside.

32. The Appeal is allowed. The impugned order dated 1.8.2014 is quashed and set aside. The Draft Notice of Motion taken out by the plaintiffs is dismissed. Plaintiff no.1 is at liberty to accept alternate accommodation offered by defendant no.4. In view of disposal of the Appeal, Civil Application (ST) No.21164 of 2014 does not survive and the same is disposed of.

33. At this stage, Mr. Khobragade orally applies for staying this order for a period of four weeks from today. Mr. Kadam opposes this application on the ground that 198 occupants have already shifted elsewhere and defendant no.4 is paying compensation between 15000/- - 18000/- per month to them. Mr. Khobragade states that plaintiffs no. 2 to 20 will have to make arrangement for challenging this order and, therefore this order may be stayed for a period of four weeks from today. Mr. Khobragade assures

that within two weeks from today, the plaintiffs and all the adult family members residing with them will file undertakings in this Court after giving advance copy to the other side, incorporating therein;

(i) that they are in possession of the suit premises and nobody else is in possession;

(ii) that they have neither created any third party interests nor parted with possession;

(iii) that they will hereafter neither create third party interests nor part with possession;

(iv) that in case they are unable to obtain suitable orders from the higher Court within four weeks from today, they will handover vacant and peaceful possession of the premises in their occupation to defendant no.4.

34. Subject to the plaintiffs and all the adult family members residing with them filing undertaking in the aforesaid terms within two weeks from today, after giving advance copy to the other side, this order shall remain stayed for a period of four weeks from today.

35. It is made clear that in case the plaintiffs do not file undertaking within the stipulated period and/or commit breach of any of the conditions of the undertaking, defendant no.4 and the authorities of MHADA will be at liberty to proceed in the matter in accordance with law. It is also made clear that in case the plaintiffs do not get suitable orders from the higher Court within four weeks from today and do not vacate the suit premises in their respective occupation, defendant no.4 and the MHADA authorities would be at liberty to proceed with the matter in accordance with law. Order accordingly.

4. The above order of this Court dated 12.09.2014 was then assailed by the plaintiffs before the Apex Court in Special Leave Petition (C) No. 28035 of 2014. The Apex Court by an order dated 17.10.2014 was pleased to dispose of the said SLP in terms of the following order:

"Having heard learned counsel for the parties, it is directed that the developer will not be entitled, even remotely, to advance the contention that the petitioners shall not be entitled to the requisite permanent accommodation at the developed site.

In the meantime, the petitioners shall be entitled to get a sum of Rs.18,000/- each per month from the developer till they are shifted to the permanent accommodation at the site in question. The petitioners shall vacate the premises in question within three weeks from today.

We have passed the direction as Mr. Naphade, learned senior counsel appearing for the Authority, has assured that it is the obligation of the Authority to see that the agreement which is in consonance with this order is given effect to.

The special leave petition is, accordingly, disposed of. No order as to costs."

5. The learned counsel for the petitioner vehemently submits that the respondents are guilty of contempt of the above order passed by the Apex Court as the petitioner under the orders of the Apex Court was entitled to a permanent alternate accommodation at the developed site.

6. To make such a claim the Advocate for the petitioner addressed a letter dated 01.11.2014 to the Advocate for respondent No.4-landlord that an agreement for alternate accommodation be provided to the petitioner (plaintiff No.10 in the S. C. Suit No. 2160 of 2014). It is pertinent to note the contents of this letter which would indicate that the petitioner "Mr. Iqbal Khan" referred himself as constituted attorney of one Smt. Umaima Kalimuddain Chitalwala,

Director of M/s. N. Lookmanji Mithaiwala Pvt. Ltd. The contents of this letter are required to be noted which read thus:

Please refer to letter dated 30/10/2014 written by Mr. Rajesh P. Khobragade advocate to Mrs. Umaina K. Chitalwala the Director of M/s. N. Lookmanji Mithaiwala Pvt. Ltd. and copy endorsed to you which was served in your office on same day at 6.50 pm.

In connection with the above letter I have been instructed by Mr. Iqbal Khan constituted attorney of Mrs. Umaina K. Chitalwala the director of M/s. N. Lookmanji Mithaiwala Pvt. Ltd. that on account of urgency of matter I should approach you to get the factual position in respect of agreement for alternate accommodation to be provided to the Respondent No.10 (Original Plaintiff No.10 in City Civil Court) in the High Court as ordered by Hon'ble Supreme Court.

7. This letter was replied by the Advocate for respondent No.4-landlord by a letter dated 01.11.2014 inter alia stating that as per the certified list issued by the M.B.R. & R. Board (MHADA) the tenancy of room No.4 which was claimed by the petitioner was in the name of one Mr. Siraj Ahmed. It was stated that even the petitioner had described himself accordingly in the title of the said suit. The petitioner's Advocate was informed that as per the certified list issued by the M.B.R. & R. Board the tenancy of room No.4 stood in the name of one Siraj Ahmed and certification has been kept in abeyance. A photocopy of the certified list of the board was enclosed with the letter. It was stated that this being the factual position the agreement

for permanent alternate accommodation is made in the name of Mr. Siraj Ahmed.

8. The petitioner, however, disputed this position and by a letter of his Advocate dated 03.11.2014 addressed to the Advocate for respondent No.4 as also the Executive Engineer of the MHADA re-asserted his rights to a permanent alternate accommodation inter alia recording that the petitioner is a constituted attorney of M/s. N. Lookmanji Mithaiwala Pvt. Ltd. and hence the agreement for alternate accommodation should be made in the name of M/s. N. Lookmanji Mithaiwala Pvt. Ltd. It was stated that as per the orders of the Apex Court, the agreement was required to be made in the name of the petitioner and Siraj Ahmed was not the petitioner in the Apex Court and accordingly respondent No.4 had committed contempt of the orders of the Apex Court by not executing the agreement in favour of the petitioner. It can thus be noticed that the petitioner was making contradictory assertions.

9. Thereafter the petitioner moved Civil Application (Stamp) No. 29091 of 2014 in Appeal from Order No. 951 of 2014 (which was already disposed of by an order dated 12.09.2014). In this Civil Application the petitioner made a prayer that the order passed by the Apex Court in SLP (C) No. 28035 of 2014 dated 17.10.2014 be

directed to be complied by respondent Nos.2-4. It was contended that the Apex Court had acknowledged the entitlement of the petitioner and so it was obligatory on the part of respondent No.4 to enter into an agreement with the petitioner. It was contended that respondent No.4 had sent an agreement in the name of Mr. Siraj Ahmed who is shown in the list of MHADA as a tenant however in view of the orders passed by the Apex Court the agreement was required to be sent in the petitioner's name. This was in violation of the orders of the Apex Court. The learned Single Judge of this Court by an order dated 07.11.2014 disposed of the Civil Application. The observation of the Court in paras 3 to 6 are required to be noted as the petitioner has also alleged contempt of this order which reads thus:

"3. Learned Sr. Counsel for respondent No.4, the main contesting party, submitted that the applicant is supposed to vacate the premises till tomorrow as per the order of the Supreme Court. He suggested that respondent No.4 shall submit an agreement in blank name of the tenant/occupant in the office of MHADA and then MHADA to take steps as directed by the Hon'ble Supreme Court.

4. Mr. Lad, learned Counsel for MHADA, who is present in Court and who is on the panel of MHADA, is directed to appear for MHADA in the matter. He submitted that on submission of such agreement, keeping the name of the tenant/occupant blank, MHADA will act according to the order passed by the Supreme Court.

5. In view of the above, the applicants to vacate the premises

by tomorrow as directed by the Supreme Court.

6. *Civil Application is disposed of accordingly."*

10. The grievance of the petitioner is that the above order of the learned Single Judge dated 07.11.2014 has been breached by respondent No.4 and the MHADA by not entering into an agreement in petitioner's name for permanent alternate accommodation. It is submitted on behalf of the petitioner that even the possession of room No.4 of the suit premises was handed over by the petitioner. Learned counsel for the petitioner would vehemently contend that the respondents are in gross breach of the orders passed by the Apex Court and the above orders dated 07.11.2014 passed by the learned Single Judge, in not allotting a permanent alternate accommodation, despite directions as contained in the said orders.

11. Miss. Deshmukh, learned counsel for the MHADA at the outset submits that the Contempt Petition is not maintainable for two reasons. Firstly the petitioner has alleged contempt of the order dated 17.10.2014 of the Apex Court, which would not be maintainable before this Court; and secondly under the order dated 07.11.2014 passed by the learned Single Judge of this Court there cannot be any contempt as there is no direction as contained in the said order which is violated, as also there is no direction that the

MHADA should allot permanent alternate accommodation to the petitioner.

12. Miss. Deshmukh, learned counsel for MHADA submits that there is a dispute about the lawful entitlement to a permanent alternate accommodation in regard to the said room which is clear from the fact that in the suit before the City Civil Court, the petitioner had approached the Court only as an occupier. It is submitted that the following description of the petitioner as plaintiff No.10 in the suit makes the position abundantly clear that it is Mr. Siraj Ahmed, who is recognized occupant/tenant of the said room No.4.

*"10. Mr. Iqbal, Adult, Indian aged 60,
Occupier of Room No.4,
Belong to Mr. Siraj Ahmed, Aged 65 years,
an Adult, Indian Inhabitant, Room No.4,
Ground floor, Plot 443J."*

Miss. Deshmukh would further submit that in the certified list of tenants, name of Mr. Siraj Ahmed appeared as tenant and not of the petitioner. In view of the rent receipt standing in the name of Mr. Siraj Ahmed in the certified list, in the column of occupant, a remark (kept in abeyance) has been made. It is submitted that the petitioner himself changed this position as is clear from his Advocate's letter

where he made a new claim as a constituted attorney on one Smt. Umaima K. Chitalwala, Director of M/s. N. Lookmanji Mithaiwala Pvt. Ltd. It is submitted that in view of these different claims the name of occupant was not mentioned since there were no documents furnished by the petitioner or any other party to claim the occupancy in respect of room No.4. It is submitted that on the petitioner's own showing as clear from the cause title of the suit, room No.4 was shown in the name of Mr. Siraj Ahmed which was also the position in the certified list of tenants.

It is submitted that the petitioner had at no point of time asserted that his name be included in the certified list of tenants and had never approached the authorities to include his name in the certified list of tenants. It is submitted that it is implied that under the statutory obligation the authority would be required to ensure that the tenant/occupier who is entitled as per law is granted the permanent alternate accommodation. It is further submitted that respondent No.4-landlord had accordingly forwarded an agreement in respect of room No.4 with the name blank in view of this dispute more particularly as a new case was sought to be made out by the petitioner in the Civil Application (Stamp) No. 29091 of 2014 that the petitioner is duly constituted attorney of M/s. N. Lookmanji

Mithaiwala Pvt. Ltd. with the property of room No.4 was taken by the said M/s. N. Lookmanji Mithaiwala Pvt. Ltd. several years back. It is stated that in the order dated 07.11.2014 the Court suomotu had asked Mr. Lad, learned counsel for the MHADA, who was present in the Court and who was on the panel of MHADA, to appear for the MHADA, in the matter and who had made submission that blank agreement would be forwarded by respondent No.4 to the MHADA keeping the name of the tenant/occupant blank and that the MHADA on submission of this agreement will act according to the orders of the Apex Court. It is, thus, submitted that in view of this dispute it would be possible for the MHADA to comply with the order passed by the Apex Court only on determination as to the actual entitlement to the permanent alternate accommodation as the certified list of tenants showed the name of Mr. Siraj Ahmed as tenant and not the petitioner. It is submitted that this exercise of determination was undertaken by the MHADA.

13. In this regard learned counsel for the MHADA has also drawn my attention to an order dated 10.02.2015 passed by the Executive Engineer whereby it is held that as regards the disputed premises for which the petitioner and/or M/s. N. Lookmanji Mithaiwala Pvt. Ltd. had made a claim, their claim was rejected as

despite opportunities granted to them they had not produced any document on the basis of which their claim can be upheld. It was held that the name of Siraj Ahmed was certified as a tenant of the said premises and the petitioner was claiming to be occupant through M/s. N. Lookmanji Mithaiwala Pvt. Ltd. who cannot be said to be eligible for the permanent alternate accommodation and, therefore, the agreement for the permanent alternate accommodation cannot be entered with the petitioner. Learned counsel for respondent Nos.1 to 3 submits that this order has not been challenged by the petitioner.

14. On behalf of respondent No.4-landlord, an affidavit has filed of Mr. Damji Ramji Shah who has opposed the Contempt Petition to submit that there is no case of contempt against respondent No.4. It is submitted that they have complied with the orders passed by this Court by forwarding an agreement to the MHADA by keeping the name of the person blank so that the MHADA would allot the permanent alternate accommodation to the person who is really entitled to it. It is submitted that respondent No.4 was always ready and willing to comply all the obligations under the law. It is also stated that respondent No.4 had executed permanent alternate accommodation agreement with 226 out of 231 eligible tenants and that monthly compensation for transit accommodation to each of the

226 occupant has also been paid. It is also submitted that in view of the order dated 10.02.2015 passed by the MHADA, Mr. Siraj Ahmed, original tenant has been held to be entitled for the permanent alternate accommodation in lieu of room No.4. It is submitted that by forwarding the agreement and keeping the name blank respondent No.4 has complied his obligation under the order passed by the Apex Court as also the order dated 07.11.2014 passed by this Court. It is also contended that the entire approach of the petitioner is factually incorrect in as much as the petitioner is erroneously interpreting the order dated 17.10.2014 passed by the Apex Court as also the order dated 07.11.2014 passed by this Court. The petitioner is not entitled for a permanent alternate accommodation and is taking undue benefit of his description in the title of S. C. Suit No. 2160 of 2014 filed by the petitioner along with 19 other occupants.

15. Having considered the rival submissions, it is clear that there is dispute as to who is legally entitled for a permanent alternate accommodation. In the certified list notified by MHADA admittedly the name of the petitioner is not reflected in respect of room No.4, against which the petitioner claims a permanent alternate accommodation and in fact the name of Mr. Siraj Ahmed has been notified. There is a specific remark in the column of the occupant

"kept in abeyance". It appears that this certification by MHADA has not been assailed by the petitioner. It is further pertinent to note that the petitioner in the cause title of the suit has described himself as occupier of room No.4 belonging to Mr. Siraj Ahmed as noted hereinabove. However, after the order dated 17.10.2014 was passed by the Apex Court the petitioner has come with a completely new stand to assert his right for a permanent alternate accommodation in respect of room No.4 as the constituted attorney Smt. Umaina K. Chitalwala, the director of M/s. N. Lookmanji Mithaiwala Pvt. Ltd. and has made a claim for a permanent alternate accommodation not for himself but for Smt. Umaina K. Chitalwala, the director of M/s. N. Lookmanji Mithaiwala Pvt. Ltd. Admittedly neither the certified list of the MHADA nor the assertion that the petitioner in the occupant as described by himself in S. C. Suit No. 2160 of 2014 are borne out in the record of the MHADA. It is further significant that these rival claims were considered by the Competent Authority/Executive Engineer of MHADA in passing an order dated 10.02.2015 which observes that the petitioner failed to produce any document which would either indicate his own independent right or the right of M/s. N. Lookmanji Mithaiwala Pvt. Ltd. This order dated 10.02.2015 is also not assailed by the petitioner. There is much

substance in the contention as urged on behalf of the respondents and the claim of the petitioner is required to satisfy a lawful entitlement. The MHADA is under a legal obligation to make a permanent alternate allotment to a person whose name appears in the certified list. Any deviation by the MHADA would result in violating a public duty and the statutory norms in discharge of its functions under the MHADA Act and Rules thereunder. If this be the case it is surprising as to on what basis the petitioner is assailing that there is intentional or willful disobedience of the order passed by the Apex Court dated 17.10.2014 (supra) and the order passed by this Court dated 07.11.2014 (supra).

16. It is further significant that the petitioner in prayer clause (a) is alleging contempt of the order passed by the Apex Court dated 17.10.2014 in SLP (Civil) No. 28035 of 2014. As regards the authority of this Court to exercise its contempt jurisdiction it would be useful to note the provisions of Article 129 and Article 215 of the Constitution of India as also the provisions of the Contempt of Courts Act, 1971 (for short 'the 1971 Act'). Articles 129 & 215 would provide as follows:

129. Supreme Court to be a court of record.- The Supreme Court shall be a court of record and shall have all the powers of

such a court including the power to punish for contempt of itself.

215. High Courts to be courts of record.- *Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.*

A plain reading of Article 215 makes it clear that, it empowers the High Court to punish for contempt of itself and no other Court. Moreover Article 129 specifically speaks of the powers of the Supreme Court to punish for contempt of itself.

17. As regards the Contempt of Courts Act, 1971 the provisions which concern jurisdiction of the High Court to initiate contempt proceedings are to be found in Sections 10 and 14 of the Act. These provisions read thus:

10. Power of High Court to punish contempts of subordinate Courts- *Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself:*

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

14. Procedure where contempt is in the face of the Supreme Court or a High Court.-(1) *When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall-*

- (a) cause him to be informed in writing of the contempt with which he is charged;*
- (b) afford him an opportunity to make his defence to the charge;*
- (c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and*
- (d) make such order for the punishment or discharge of such person as may be just.*

18. Thus on a plain reading of Sections 10 and 14 of the Act it is clear that the High Court can initiate proceedings for contempt either of itself or that of a Court subordinate to it. It is thus clear that this Court would lack jurisdiction to entertain prayer clause (a) of the petition to the extent it alleges a breach of the orders passed by the Apex Court and initiate contempt proceedings against the respondents in this regard.

19. As regards the case of the petitioner that the order dated 07.11.2014 passed by the learned Single Judge is concerned I am of the clear opinion and for the detailed reasons as noted above that there is no breach of the said orders by any of the respondents. In fact what is interesting is that the petitioner has accepted that a blank agreement be forwarded by respondent No.4 to MHADA whereby the petitioner impliedly accepts that the issue of legitimate entitlement is

at large before the competent authority of MHADA. It is thereafter that the eligibility came to be decided by the competent officer of the MHADA vide his order dated 10.02.2015 which is not assailed by the petitioner.

20. All these facts completely reveal that the petitioner is seeking a back door entry to seek a permanent alternate accommodation taking advantage of the fact, that in the suit he was arrayed as plaintiff No.10 when in fact he was not a eligible tenant, as also he has not produced any document before the authorities to make such a claim. In any event if the petitioner was to have any document to assert his lawful claim for permanent alternate accommodation he would have resorted to a lawful course of action and assert a legitimate claim before appropriate forum and not in contempt proceedings.

21. For the foregoing reasons, the Contempt Petition is wholly without any merit as also is a gross abuse of the process of law and is accordingly rejected, however with costs quantified at Rs.15,000/- to be deposited by the petitioner with the Maharashtra Legal Services Authority within a period of two weeks from today.

(G. S. KULKARNI, J.)