

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2516 OF 2013

Jitendra G. Janavale

..... Petitioner

V/s

State of Maharashtra & Ors.

..... Respondents

Mr. Sagar A. Rane for the Petitioner.

Mr. H.C. Pimple for the Respondent Nos.2 and 3/Corporation.

Mr. Hardik Desai i/b Mr. Purav J. Damania for the Respondent Nos.4 and 5.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 10 OCTOBER 2016

ORDER:

1 This Writ Petition was disposed of by judgment and order dated 17 June 2016. As per the Administrative order passed by the Hon'ble the Chief Justice on 1 October 2016, this Petition has been ordered to be listed before a Division Bench presided over by one of us (A.S. Oka, J.).

2 The present Writ Petition in which the allegation was that an elected Councillor of the Mumbai Municipal Corporation has carried out illegal construction was disposed of by judgment and order dated 17 June 2016. It was ordered to be listed on 9 August 2016 for reporting compliance. As far as clause (I) of paragraph 17 of the judgment and

order is concerned, there is an Affidavit filed by Shri B.G. Pawar, Deputy Municipal Commissioner in which it is stated that action was taken under the Mumbai Municipal Corporation Act, 1888 and now a Reference under section 18 of the Mumbai Municipal Corporation Act, 1888 has been made to the Hon'ble the Chief Judge of the Court of Small Causes, Mumbai.

3 The other direction was in terms of clause (II) of paragraph 17 of the said judgment and order which reads thus:

“(II) We direct the Assistant Commissioner of the Mumbai Municipal Corporation in charge of K/W ward to visit the structure in question with a view to ascertain whether any further illegal construction has been carried out. If the Officer finds that illegal constructions have been carried out, the Assistant Commissioner shall forthwith take steps for removal of the same. He will also ascertain whether the work subject matter of the order dated 1st April 2011 has been removed. If he finds that the entire offending work in terms of the order dated 11th April 2011 has not been removed, he will forthwith take action of removal. The action of demolition shall be take after serving a notice to the respondent no.4 in accordance with law.”

Compliance Affidavit was to be filed on or before 9 August 2016. Our attention is invited to Affidavit dated 6 August 2016 filed by Shri Parag R. Mhasurkar, Assistant Commissioner K/West Ward. We have perused

the said Affidavit. Paragraph 4 of his Affidavit refers to the final judgment dated 17 June 2016 and the fact that the compliance was to be reported on or before 9 August 2016. We have already reproduced above the clause (II) of the operative part of the judgment and order. Clauses (f), (g) and (h) of paragraph 4 of the said Affidavit read thus:

“(f) I say that the said proposal for regulation of deviations in the existing structures from approved plan and proposed change of user have been approved by the office of the EEBP (WS) vide no.CHE/0672/Misc/AK on 30.07.2016. I say that the same is informed to the office of the K/W ward on 02.08.2016 u/no.Dy.Ch.Eng/BP/5256/WS-I. Hereto annexed and marked Exhibit 3 is the copy of the plan approved u/no.CHE/0672/Misc/AK on 30.07.2016 and Exhibit 4 is the copy of the letter dated 02.08.2016 u/no. Dy.Ch.Eng/ BP/5256/WS-I.

g) I say that as the plans for regularization of the addition and alteration which were beyond the approved IOD plans were pending in the office of the building proposal department no action was initiated against the same u/s 351 of the MMC Act as per earlier opinion of Joint Law Officer (High Court) Legal department dt. 03.08.2013.

h) I say that the said addition and alterations which are beyond the approved sanctioned IOD plans are now regularized by the office of the Building proposal department and thus, no action against the same is now warranted.”

4 In paragraph 5, it is stated that in view of the facts mentioned in the Affidavit, the unauthorized work in respect of which notice dated 16 February 2010 was issued under section 354 of the said Act of 1888 and an order was passed on 1 April 2011 is found “complied with”.

5 Thus, after a direction was issued by this Court under its final judgment and order to take action of demolition, a proposal for regularization of deviations in existing structure was approved by the Municipal Corporation on 30 July 2016. A copy of letter dated 2 August 2016 signed by A.E.(B.P.) KWS of the Mumbai Municipal Corporation is annexed to the Affidavit which records that M/s Parth Architect Consultants on behalf of Shri Mehul Vora (the fourth Respondent) submitted revised plans on 20 June 2016 as per the approval granted by the Municipal Commissioner on 2 June 2016. It further records that a proposal has been sanctioned by the competent authority for regularization, additions/alterations and the change of user in existing bungalow, outhouse and garage on the plot.

6 We must note here that the said Shri Mehul Vora was the fourth Respondent in the Writ Petition who is the husband of the fifth Respondent who is an elected Councilor of the Mumbai Municipal Corporation.

7 Thus, from the said paragraphs it is apparent that not only that the Municipal Corporation has committed a gross breach of the directions contained in clause (II) of the said judgment and order but the Municipal Corporation has regularized the offending construction made by the fourth and fifth Respondents. The Affidavit further notes that on 21 April 2016 the aforesaid Architect submitted a revised plan to which approval was granted by the Municipal Commissioner on 2 June 2016. The judgment in the Writ Petition was reserved on 23 February 2016. The Municipal Corporation and even the fourth and fifth Respondents were heard when the Petition was heard finally. Notwithstanding the fact that the judgment in the Petition was reserved, the Architect of the fourth Respondent submitted revised plans on 21 April 2016. It appears that the Municipal Commissioner granted approval thereto on 2 June 2016. The fact that the Municipal Commissioner approved the revised plans on 2 June 2016 is noted in the letter dated 2 August 2016 annexed to the Affidavit of Shri Mhasurkar. Thereafter, the Municipal Corporation approved the proposal for regularization of deviations in the existing structures and the change of user on 30 July 2016.

8 Prima facie, the act of entertaining a revised plan for regularization after hearing of the Petition was concluded, the act of the Municipal Commissioner of granting sanction on 2 June 2016 and the act of

granting proposal for regularization on 30 July 2016 clearly constitute criminal contempt. This is an attempt to over reach the authority of this Court. It amount to interference with the administration of justice. Apart from criminal contempt, the act of approving proposal for regularization on 30 July 2016 is a deliberate and willful breach of judgment and order dated 17 June 2016.

9 There is another interesting aspect which must be noted. If Affidavit of Shri Parag R. Mhasurkar is perused and in particular paragraphs 1,2, 3 thereof, the Affidavit is filed as if it is an Affidavit-in-Reply to the Writ Petition. In fact, after Writ Petition was allowed by this Court, a contention has been raised by Shri Mhasurkar that Writ Petition is not maintainable which should be dismissed. This shows complete non application of mind and complete disrespect to the judgment and order of this Court.

10 Issue show cause notice to Shri Ajoy Mehta, Municipal Commissioner, Mumbai calling upon him to show cause as to why action should not be initiated against him under the Contempt of Courts Act, 1971 for committing civil as well as criminal contempt of this Court. The contempt notice is made returnable on 18 November 2016. After considering his Reply, the question of issuing contempt notice to the other officers will be considered.

11 On the returnable date, Municipal Corporation shall produce the entire file for perusal of the Court. For the time being, the personal presence of Shri Mehta is dispensed with

(A.A. SAYED, J.)

(A.S. OKA, J.)

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