

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 10796 OF 2016
AND
CONTEMPT PETITION NO. 158 OF 2014

FERRDAN @ BABA FARZAN ARDESHIR DORDI
VERSUS
MUNICIPAL CORPORATION AURANGABAD

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Advocate for Applicant / Petitioner : Shri Bharuka D.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 14, 2017

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PER COURT :-

1. Learned counsel for the petitioner / applicant submits that he is ready with the matter and can address the Court even on the Contempt proceedings. None present for the respondent.

2. The Civil Application, seeking restoration of the Contempt Petition has been filed in time. For the reasons set out in the Application, the same is allowed and Contempt Petition No.158 of 2014 is restored.

3. Learned counsel for the petitioner has strenuously contended that the respondent / Corporation has not acted with promptitude in complying with the directions set out in

paragraph No.7(ii) of the judgment dated 12.8.2013 in Second Appeal No.209 of 2012. Civil Application No. 8712 of 2014 was also filed for adding the then Commissioner of Municipal Corporation, Aurangabad, by name. It is further stated that because of the deliberate disobedience of the Commissioner of the Municipal Corporation, the order of this Court has not been complied with.

4. I find from the record that by order dated 12.8.2013, this Court had directed the Corporation to follow the procedure laid down in law and remove the encroachment at issue. The concerned direction in paragraph No.7(ii) reads as under:-

"(ii) It is directed that the Aurangabad Municipal Corporation, Aurangabad shall take action in accordance with provisions of Sections 260 and 478 of Bombay Provincial Municipal Corporations Act, 1949 and proceed to remove the encroachment. If it is found that the Appellant has also made encroachment, the same shall also be removed in accordance with the provisions of law."

5. Learned counsel for the petitioner submits that the Corporation has issued notices under Section 478 of the Bombay Provincial Municipal Corporation's Act, 1949 in October 2013 for

the removal of the encroachment. As such, it is obvious that this Court passed an order on 12.8.2013 and the Corporation had acted upon the directions in October, 2013. It is informed by the learned counsel for the petitioner that the notice under Section 478, issued in October, 2013 has been challenged by the owner of the structure and the trial Court has granted interim protection to the said person, pursuant to which, the encroachment could not be removed.

6. I find that this Court has specifically directed the Corporation to initiate action as per Sections 260 and 478 of the 1949 Act for removing encroachment. The notice issued by the Corporation cannot be said to be a belated action. So also, if the trial Court has stayed the notice and protected the owner / plaintiff, I do not find that the respondent could be held guilty of willful, deliberate and intentional disobedience.

7. Considering the above, the Contempt Petition, being devoid of merits is dismissed.

(RAVINDRA V. GHUGE, J.)

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