

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 23 OF 2016

IN

WRIT PETITION NO. 184 OF 2013

MR ANTONIO G. BRAGANZA THROUGH POA
MRS. ALDILA BRAGANZA.

... Petitioner

Versus

SHRI. EKNATH B. TALKAR AND 5 ORS.

... Respondent

Mr. Vivek Rodrigues, Advocate for the Petitioner.

Mr. C. Padgaonkar, Advocate for the Respondent no. 4.

Mr. Somnath Karpe, Advocate for Respondents no. 8 and 9.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 10th January, 2017

P.C.:

Heard Shri Vivek Rodrigues, learned Counsel appearing for the Petitioner, Shri C. Padgaonkar, learned Counsel appearing for the Respondent no. 4 and Shri Somnath B. Karpe, learned Counsel appearing for the Respondent no. 8 and 9.

2. The above Contempt Petition filed by the Petitioner on the ground that directions issued by this Court in the Judgment dated 05.02.2014 whilst disposing of prayer (a) of the Petition, have not been complied with, within the time stipulated therein.

3. Mr. Vivek Rodrigues, learned Counsel appearing for the Petitioner has submitted that as per the said directions,

Respondent no. 3 was directed to examine the application for regularization intended to be filed by the Respondents no. 8 and 9 within a period of 6 weeks from the date of such order. It is further pointed out that there were directions to the local Panchayat/the Respondent no. 4, to file compliance report within two weeks thereafter and accordingly the matter was posted on 21.04.2014 for compliance report. It is further pointed out that on 21.04.2014, when the matter was listed on board, the Respondent no. 3 filed a memo that there was no compliance report filed by the Respondent no. 4. It is further submitted that in the meanwhile, the private Respondents no. 8 and 9 filed Writ Petition No. 294/2014 before the learned Single Judge wherein an order came to be passed on 07.05.2014, inter alia, staying the operation of the order passed by the Respondent no. 3. It is further submitted that as such ad-interim order was operative upto the next date and as it was not extended, the Respondent no. 4 has disobeyed the direction of this Court and as such committed contempt of the directions issued in the order dated 05.02.2014. It is further pointed out that in the farad order dated 20.02.2014, it is clarified that Rule was issued only with regard to prayer clause(a) in the Writ Petition though the petition was disposed of as far as prayer clause(b) is concerned. Learned Counsel further pointed out that as the said order was not complied in terms of the directions issued by this Court in the order dated 05.02.2014, the Respondent-Panchayat is liable to be

punished for contempt of Court. Learned Counsel, during the course of the hearing, has also brought to our notice reference to the communication by the Respondent no. 3 to the Respondent no. 4 somewhere in April 2014 intimating about the refusal of permission for regularisation of the structure by the Respondent no. 4. Learned Counsel as such pointed out that from the conduct of Respondent no. 4, case has been made out for admitting the above Contempt Petition to prosecute the concerned officials for disobeying the directions of this Court.

4. Mr. C. Padgaonkar, learned Counsel appearing for the local Panchayat- Respondent no. 4, has pointed out that in the reply filed by the Respondent no. 4 it has been clearly mentioned that during the concerned period, there was change of 6 Secretaries which resulted in the delay in filing the compliance report. It is further pointed out that thereafter, the Respondent no. 4, Village Panchayat, was served with an ex-parte order passed by this Court in Writ Petition filed by the private Respondents. Learned Counsel further submits that in view of the interim order, compliance could not be carried out and there was no intentional act committed by the Respondent no. 4 which could be termed as contempt of Court. Learned Counsel has also brought to our notice that at para 1 of the affidavit-in-reply filed by the Secretary of the concerned Panchayat, he has tendered an unconditional apology for the lapse in not filing the compliance

report as per the directions of the Court in the Judgment dated 05.02.2014.

5. Mr. Karpe, learned Counsel appearing for the private Respondents submits that when the matter was taken up on 21.04.2014, a report was submitted by the Respondent no. 3 and the matter was posted for final hearing as Rule was issued as regard to prayer clause(B), and at that stage, there was no grievance raised by the Petitioner about the failure on the part of Respondent no. 4 on the grounds that there was default by the Respondent no. 4 in filing the compliance report. Mr. Karpe, learned Counsel appearing for the private Respondents has brought to our notice order dated 21.04.2014 whereby Contempt Petition with similar allegations came to be disposed of, though, it is contented by Mr. Vivek Rodrigues, learned Counsel appearing for the Petitioner, that such order passed was not brought to the notice of this Court.

6. We have carefully considered the submissions and the grievances raised by the learned Counsel and with their assistance we have also gone through the records.

7. No doubt when directions were issued by this Court in the Judgment dated 05.02.2014, it is expected that the Respondent no. 4 would comply with such directions in terms thereof and in

case there is any delay to comply with such directions, the concerned Respondents are expected to file an application for extension of time. In the present case, admittedly, no such application was filed for extension of time and as such the conduct of the Respondent no. 4 in not taking necessary steps in terms of the said directions cannot be condoned. It is made clear that the concerned Respondents shall ensure that the directions issued by this Court are strictly complied with and in case of any breach, strict action would be taken in future.

8. In the present case, considering that on 07.05.2014, an ad-interim order was passed by the learned Single Judge staying the order passed by the Respondent no. 3, we find that the lapse on the part of Respondent no 4 in not seeking extension of time to comply with the said directions can be examined leniently. In any case, an apology has been tendered by the concerned Secretary at para 1 of the affidavit. Accepting the said unconditional apology tendered by the concerned Secretary/the Respondent no. 4 and in the light of the observations made above, the Contempt Petition is disposed of.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

msr