

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO. 170 OF 2011

Manish Shobhachand Lunkad & Anr. ..Petitioners

v/s.

Ramdas Gody Shinde & Ors. ..Respondents

Mr. Bhooshan Mandlik i/b. Mr. S.S.Patwardhan for the Petitioner.
Mr. Tanaji Mhatugade i/b. S.B.Deshmukh for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 21ST JUNE, 2017.**

P.C.

1. This is an application filed by the aforesaid petitioners for initiating contempt against the respondent no.1 for committing breach of order dated 2nd February, 2011 in Civil Application No.158 of 2011 in Appeal from Order No. 99 of 2011.
2. Mr. Bhooshan Mandlik, the learned Counsel for the petitioner has submitted that this Court by order dt. 2nd February

2011, had directed the respondent no.1 to maintain status quo in respect of the suit property. He has submitted that the respondent no.1 commenced construction in the suit property, in breach and violation of the said order. The learned Counsel has submitted that the breach is willful and hence the respondent no.1 is liable to be punished under the Contempt of Courts Act, 1971.

3. Mr. Tanaji Mhatugade, the learned Counsel for the respondent no.1 has submitted that the suit filed by the petitioners was basically for cancellation of sale deed executed in favour of the respondent no.1 herein. He has submitted that the petitioners had not sought any relief of permanent injunction seeking to restrain the respondent no.1 from carrying out any construction in the suit property. He has stated that the respondent no.1 has not violated any order of the Court.

4. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties. Before advertng to the facts of the case, it would be advantageous to refer to the decision of the Apex Court in ***Ashok Paper Kamgar Union vs. Dharam Godha and ors***¹ wherein it has been held as under:-

“17. [Section 2\(b\)](#) of Contempt of Courts Act defines 'civil contempt' and it means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of undertaking given to a Court. 'Wilful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. ”

5. In ***Jhareshwar Prasad Paul & Anr vs. Tarak Nath Ganguly & Ors.***², the Apex Court has held as under:-

“The purpose of contempt jurisdiction is to uphold

¹ (2003) 11 SCC 1,

² (2002) 5 SCC 352

the majesty and dignity of the courts of law. Since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct

of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts."

6. Keeping in mind the above principles, the question, which falls for consideration is whether the respondent no.1 has willfully, deliberately or contemptuously violated the status quo

order dated 2nd February, 2011. It would therefore be necessary to consider the actual facts giving rise to this contempt petition.

7. The records reveal that the petitioners herein had filed a suit for cancellation of sale deed, declaration and injunction. The dispute in the said suit was in respect of the property bearing plot no.11 survey no.78, of village Khadkale, Maval, District Pune. The said property was originally owned by Rajendra Mohanlal Mandlecha, (the defendant no.1). The petitioners had claimed that said Mandlecha (D1) had executed a power of attorney dated 24.6.1987 in favour of Harakchand Gadia (the defendant no.3). On the basis of said Power of Attorney, said Harakchand Gadia (D3) executed an unregistered agreement of sale dated 30th June, 1987 in favour of one Kiritbhai Popatlal Shah, and subsequently said Gadia (D3) executed a Deed of Sale dated 12.1.2007 in favour of said Kiritbhai Popatlal Shah. On the same day i.e. on 12.1.2007 said

Kiritbhai Popatlal Shah executed a Deed of Sale in favour of the petitioners. The petitioners claim that on execution of the said sale deed in their favour, they gave a notice to the Talathi to effect the mutation entry in 7 x 12 extract. The Nayab Tahsildar, Wadgaon, rejected the said application for effecting the mutation entry in 7 x 12 extract. In the meanwhile, the defendant no.1 Rajendra Mandlecha (D1) executed a Deed of Sale dt..5.1.2010 in favour of the respondent no.1 herein. The petitioners claimed that the suit property was sold to them by Deed of Sale dt. 12.1.2007 and that they were put in possession of the suit property. The petitioners therefore claimed that Rajendra Mandlecha (D1) had no authority or right, to execute the sale deed in favour of the Respondent No.1 herein. The petitioners therefore sought declaration that the sale deed dt. 31.12.2009 is null and void. The petitioners sought cancellation of the said sale deed as well as the entries of the said sale deed in Index-2 register. By way of permanent injunction, the petitioners sought

to restrain the respondent no.1 and Rajendra Mandlecha (Defendant no.1) from disturbing their possession and creating third party interest in respect of the suit property.

8. The learned trial Judge by order dated 27th December, 2010 dismissed the application for injunction. Aggrieved by this Order, the petitioners preferred an appeal before this Court, being Appeal from Order No.99 of 2011 with Civil Application No.158 of 2011. By order dated 2nd February 2011, this Court directed the parties to maintain status-quo. By order dated 17th March, 2011 this Court continued operation of the order dated 2nd February, 2011 till the final disposal of the appeal.

9. The petitioners have stated that the respondent no.1 had commenced construction immediately after the dismissal of the application for injunction by the trial court. The petitioners have stated that the respondent no.1 had continued with the said

construction even after service of the order of status quo and thereby committed willful breach of the order dated 2nd February, 2011.

10. It is pertinent to note that the petitioners herein had not sought to restrain the respondent no.1 from carrying out any construction in the suit property. In the application for temporary injunction as well as in Civil Application No. 158 of 2011 in Appeal from Order No.99 of 2011, the interim relief sought by the petitioners was to restrain the respondents from disturbing their possession and creating third party interest in respect of the suit property. Suffice it to state that when the status quo order was granted in the context of such application, it can be reasonably interpreted that the status quo was aimed at maintaining the existing state as regards possession, and preventing alienation or creation of third party right in the property, pending disposal of the appeal. It is not the case of the

petitioners, that the respondent had sought to alienate or create third party interest in respect of the suit property. The grievance, as stated earlier is that the respondent no.1 has commenced construction in the suit property. Though the petitioners had claimed that the respondent no.1 had commenced construction after the dismissal of the application for temporary injunction, there were no such averments either in the appeal memo or in the civil application. Furthermore, as stated earlier, there was no specific prayer to restrain the respondent from carrying out the construction. In the absence of such specific prayer, and consequent relief in that regard, in my considered view, the status quo order would not cover the aspect of construction and it would be difficult to extend and amplify the scope of the order as to prohibit the parties from carrying out construction in the property.

11. It is contended that the respondent no.1 had carried out

the construction with an intention of disturbing the possession of the petitioners in respect of the suit property. In this regard, it is pertinent to note that the term "status quo" implies the existing state of things at any given point of time. In the instant case, the learned trial Judge has recorded a prima facie finding that the petitioners herein have failed to prove their possession in respect of the suit property. Hence, even assuming that the respondent no.1 had commenced construction in the suit property, this would not lead to disturbing possession of the petitioners in respect of the suit property.

12. It is well settled that the question of violation of a status quo order, cannot be decided by a long drawn process of reasoning or making an in-depth probe into the intentions behind the order. If the order is amenable to manifold interpretations, the Court would not be justified in holding that there was willful breach of the said order. In the instant case,

the order does not spell out in clear terms that the intention of the court was to restrain the parties from carrying out the construction in the suit property. It is therefore not permissible to proceed on the premise that the status quo order covered the aspect of construction and its breach would amount to contempt of Court.

13. Be that as it may, even in the case of civil contempt, which is quasi criminal in nature, the guilt of the person who is alleged to have committed criminal contempt of the court, must rest on reasonable certainty. Suspicion, no matter how strong, cannot form the basis of contempt. In the instant case, the averments in the contempt petition indicate that the respondent no.1 had commenced construction after dismissal of the application for temporary injunction. It is stated that the respondent no.1 continued with the construction even after service of the status quo order. The application for temporary injunction was

dismissed by order dated 27th December, 2010, whereas the status quo order was passed on 2nd February, 2011. The petitioners had not specified the extent of construction carried out by the respondent no.1 till the date of service of the status quo order and the extent of construction carried out after service of the order. The petitioners had therefore failed to establish that the respondent no.1 had carried out construction as seen in the photographs in willful and deliberate violation or breach of the order of the court.

14. Under the circumstances, and in view of the discussion supra, the petitioners have failed to establish that the respondent no.1 has committed willful, deliberate breach of the order and has thereby committed contempt of the court. Hence, the petition is dismissed.

15. Rule is discharged.

(ANUJA PRABHUDESSAI, J.)