

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 334 OF 2014
WITH
CIVIL APPLICATION NO. 15 OF 2017

Velerian Anthony Ferreira	...Applicant
<i>Versus</i>	
Gangaram Jethya Bhandari & Ors	...Respondent

Dr A Chandrachud, *with Kunal Chheda, i/b MV Kini & Co., for the Petitioner/Applicant.*

Mr Deepak Chitnis, *i/b M/s. Deepak Chitnis-Chiparikar & Co., for Respondents Nos. 1 to 3.*

Mr MPS Rao, Senior Advocate, *i/b SY Amre, for Moris Kinny.*

Dr MS Deshpande, *Court Receiver, with Mr K Rane, Master from the Office of Court Receiver, are present.*

Mr Morris B Kinny, *noticee, present.*

CORAM: G.S. PATEL, J
DATED: 31st July 2017

PC:-

1. The Court Receiver reports that the road in question has been removed and that the order of 30th January 2014 is now complied with.

2. The Court Receiver will now stand discharged. His costs, charges and expenses will be paid by the contempt Petitioner. He is

not required to pass accounts. There is also request from the police for charges for providing special machinery and forces. These expenses will also be paid by the contempt Petitioners.

3. The contempt petition was limited to the question of the road and that issue is now addressed.

4. Two aspects must be noted. I had earlier required removal of all layers of the road. That has not been possible because while this work of ensuring compliance was going on, it was found that there was a water pipeline and electricity cabling running along the side of the road through the property (viz., the road that is now removed).

5. Mr Rao has filed an affidavit on behalf of Morris Kinny, the noticee who was earlier alleged to have obstructed the road removal. Mr Kinny accepts in this affidavit that the water pipeline and electricity cable were placed at his instance but he claims to have obtained the necessary permission from Mr Chitnis's clients, the agricultural tenants. There is no evidence of this permission. Both Mr Chitnis and Dr Chandrachud for the owners deny ever having granted any such permission.

6. Dr Chandrachud points out that indeed no such permission could ever have been granted. For, there is an order of 12th October 2011 of Mr Justice AS Oka in Civil Application No. 1602 of 2010 in First Appeal No. 1392 of 2010 filed by the present contempt Petitioner in which the Respondents, i.e., the agricultural tenants, stated that they would not create any third party rights without

permission of the Court. No permission of the Court was ever obtained by these agricultural tenants in respect of this water pipeline or electricity cabling.

7. Having said that, this being within the narrow confines of contempt jurisdiction, I will simply have to leave it open to Dr Chandrachud's clients, the land owners, to institute appropriate proceedings for the removal of the water pipeline and the electricity cabling. In any such application or proceedings, they will need to join Mr Chitnis's clients, the agricultural tenants, as also, given the facts of the case, Mr Morris Kinny since he has made an unequivocal statement on affidavit that the water pipeline and electricity cables were laid at his instance; that these are not illegal; and, therefore, are not liable for removal. All rights and contentions in that behalf are expressly kept open. I need only note that Mr Kinny has not himself obtained or being able to obtain any order of any Court granting him any rights over this particular land so far.

8. The Contempt Petition is disposed of in the above terms. All notices stand discharged. There will be no order as to costs. The civil application does not survive and it is disposed of as infructuous.

9. The Registry is directed to re-arrange the papers in the Contempt Petition in proper sequential order.

(G. S. PATEL, J)