

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.261 OF 2017

Shri Aditya Arvind Kulkarni. .. Petitioner
Vs
Mr.Dhairyasheel Jadhav. .. Respondent
—
Ms.Chaitali Kale i/b Shri Nitin P. Deshpande for the Petitioner.
Shri Milind Deshmukh for the Respondent.
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CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ

DATED : 24TH JULY 2017

PC.

1. Heard learned counsel appearing for the Petitioner and the learned counsel appearing for the Contemnor.

2. The breach alleged is of the order dated 14th June 2016 passed by this Court in Writ Petition No.9071 of 2015 filed by the Petitioner. Clauses 2 to 5 of the said order read thus:

“2. having considered the submissions made by the learned counsel for th Petitioner, we are inclined to dispose of this Petition by directing the competent authority of Respondent No.2 to examine the grievances of the Petitioner and take appropriate action on the notices dated 29th January, 2009 and 2nd April, 2009 in accordance with law.

3. Needless to say that in case of there being any legal impediment to pursue the said notices further, the decision/order to that effect be taken and be communicated to the Petitioner. Let the entire exercise be completed within a period of three months from the date of receipt of the copy of this order. The Petitioner to submit the copy of this order before the competent authority of Respondent No.2 alongwith a copy of the Petition.
4. Needless to say that we have not expressed any opinion about the merits of the matter and the competent authority of Respondent No.2 shall be free to take decision in accordance with law.
5. The Respondent Nos.1 and 2 are also directed to examine the prayer clause (b) of the Petition in which the prayer has been made by the Petitioner to remove the debris spread on the way passing through city survey Nos.2193, 2211 to 2214, 2255 to 2260 and 2194. Let the appropriate decision in that respect be also taken by the competent authority of Respondent No.2 within the aforesaid period.”

3. There is an affidavit-in-reply filed by the Contemnor on 17th April 2017. Thereafter, another affidavit is tendered today by the Contemnor which is affirmed today. In Paragraph 1 of the affidavit, it is stated that the unauthorized construction made by Shri Bhosale causing obstruction to the road of the Petitioner is demolished and even debris which were lying there has been removed. He has tendered an apology to the Court for the delay in completing the work.

4. The learned counsel appearing for the Petitioner states that a substantial compliance with the order dated 14th June 2016 has not been made. The learned counsel appearing for the Contemnor has produced for perusal of the Court a notice dated 21st July 2017 addressed by the Petitioner and another to the Chief Officer of the Phaltan Municipal Council (Contemnor). In the said notice, the Petitioner has specifically stated that encroachment made on CTS No.2193 has been removed. He has stated that the said encroachment was on the access to his property.

5. The direction contained in Clause 3 of the order dated 14th June 2016 is for implementation of the notices dated 29th January 2009 and 2nd April 2009. By the said notices, Abaso Rajaram Bhosale, Ramesh Sakharam Bhosale and others were called upon to remove the boundary wall constructed on the access to the property bearing CTS No.2193. Apart from the affidavit of the Contemnor tendered today which records that the compound wall has been removed, even the notice dated 21st July 2017 addressed by the Petitioner and another to the Contemnor expressly admits that the compound wall has been removed. The second direction in Paragraph 5 of the order is to the Phaltan Municipal Council and the Chief Officer to examine the prayer clause (b) of the Petition in which a prayer has been made to remove debris on the access of the property bearing CTS No.2193. There is a

statement in the affidavit tendered today that the debris has been removed. The photographs taken on 21st July 2017 are also placed on record.

6. Thus, in our view, though belatedly, substantial compliance has been made by the Contemnor. He has tendered an unconditional apology for the delay caused in completing the work in time.

7. If the Petitioner has any other grievance regarding other illegalities committed, it is for the Petitioner to take recourse to remedies in accordance with law. Suffice it to say that the order of which the breach is alleged has been substantially complied with.

8. Hence, by accepting the unconditional apology tendered by the Contemnor, the notice issued on 20th January 2017 is hereby discharged. The Petition is disposed of.

(VIBHA KANKANWADI, J)

(A.S. OKA, J)