

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 548 OF 2010

Krishna Ramchandra Keni	...Petitioner
<i>Versus</i>	
Rajesh Akare	...Respondent

Mr Keval Shah, i/b PB Shah, for the Petitioner.
Mr Anil Sakhare, Senior Advocate, with Oorja Dhond, for
Respondents Nos. 1 to 3.

CORAM: G.S. PATEL, J
DATED: 18th July 2017

PC:-

1. The Petitioner complains that the Municipal Corporation of Greater Mumbai (“MCGM”) has in violation of an order dated 15th November 2010 illegally demolished the Petitioner's structure.

2. The background is this. The Petitioner first filed a Suit in the City Civil Court seeking protection against demolition of his structure. He claimed that this premises were in existence prior to 1976 and were first occupied by his mother. He also said that these were censused structure and assessed to a tax. It does not appear that in the Trial Court any authorization was shown. The Plaintiff filed a Suit assailing the notice issued under Section 351 by the MCGM and an order passed by the Assistant Municipal

Commissioner on 25th October 2010. He moved for ad-interim reliefs. These were refused.

3. The Plaintiff filed an Appeal from Order and moved it before the Vacation Judge in the High Court. According to the Petitioner on 8th November 2010 the Court granted ad-interim relief till 15th November 2010.

4. There is then said to be an order dated 15th November 2010 continuing the ad-interim relief till 18th November 2010. I do not have a photocopy of this order. It does not seem to have been uploaded. I will accept for the moment that the typed copy annexed at page 33 is in fact the order that was passed.

5. I am told that was communicated to the MCGM on 16th November 2010. This was under cover of the Petitioner's Advocates letter of 16th November 2010. This is a handwritten document and it seems to have been hand delivered on 16th November 2010. It is not clear from this document at what time this letter was delivered. I am told orally that it was delivered before 9.30 a.m. That seems unlikely for at least two reasons. It is not common to have an Advocates office in Mumbai at Picket Road working at 9.30 a.m. on any day of the week and the MCGM does not in a routine course accept delivery at its despatch counter before 10.30 a.m. or after 5.30 p.m.

6. The Affidavit in Reply indicates that unaware of the order of 15th November 2010, the MCGM commenced demolition at 930

a.m. on 16th November 2010. This is because the previous order of 8th November 2010 granted protection only till 15th November 2010.

7. The Affidavit in Reply says that the extension order of 15th November 2010 was communicated by fax only at about 4.45 p.m. The order of 15th November 2010 does not indicate that the MCGM was represented in Court on that date. However, the demolition commenced on 16th November 2010 at 9.20 a.m. and was completed by 10.20 a.m., i.e., it began before the MCGM despatch window open and was completed before it open.

8. As I have noted, the extension order does not indicate the presence of the MCGM officers. It is unclear from the order itself whether it was listed or mentioned.

9. I note all of this because this is a Contempt Petition and it therefore asks me to hold that the demolition action by the MCGM and these officers was in “wilful” disobedience of the order of the Court. I am unable to so hold. To do so there would have to be a clear and unambiguous demonstration that the MCGM knew and was aware of the 15th November 2010 order before it began the demolition work. There is very little point in saying that the MCGM should have conducted itself in a different manner or should have waited till some particular time of the day.

10. The MCGM is frequently pilloried for being inefficient and slow. I do not see how it should be equally pilloried when it is not.

11. There is no substance in the Contempt Petition. It is dismissed. There will be no order as to costs.

(G. S. PATEL, J)