

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.516/2015
IN
WRIT PETITION NO.5763/2004

Jaywant Ramchandra Bhandari	... Petitioner
V/s.	
Dr. Ramesh D. Pandit & Ors.	... Respondents
Mr. Satyendrakumar T. Goyal	... Contemnor
Mr. Omkarnath R. Tiwari for the petitioner	
Mr. Hareesh R. Shah for the respondent No.4.	

CORAM: K.K. TATED, J.
DATED : MARCH 9, 2017

P.C. :

1. Heard the learned counsel for the parties. By this Contempt Petition, the petitioner alleges that the respondent No.4 has violated the orders dated 14.07.2004 and 17.08.2005 passed by this court in Writ Petition No.5763/2004 by constructing a compound wall. Order dated 14.07.2004 and 17.08.2005 read thus:

Order dated 14.07.2004

“1. Issue notice before admission, returnable in the week commencing from 2nd August 2004. Mr. Gole waives notice for respondent Nos.1 and 2. Mr. Kokane waives notice for respondent No.3.

2. Reply to be filed within two weeks from today. Rejoinder to be filed within one week thereafter.

3. Status-quo as of today, till further orders.”

Order dated 17.08.2005

“Rule. Ad-interim to continue”.

2. It is the case of the petitioner that in the present proceedings, initially the respondent Nos.1 and 2 filed S.C.Suit No.4374/1978 in the Bombay City Civil Court, Mumbai for specific performance of agreement dated 10.06.1971 in respect of 850 sq.yards land being original plot No.265 and final TPS No.432 in Sy.No.18/1, 17/6 and 17/7 in Borivali village in Borivali Taluka. That suit was decreed by the Bombay City Civil Court, Mumbai by judgment and decree dated 14.03.1996, as under :

“The suit of the plaintiff is hereby decreed on following terms:

Defendants are under obligation and are hereby ordered to convey the suit property i.e. land admeasuring 850 sq.yards land being original plot No.265 and final TPS No.432 in Sy.No.18/1, 17/6 and 17/7 in Borivali as described in prayer clause (a) of the plaint.

The defendants are, therefore, ordered to take all necessary and proper steps to execute a registered deed of conveyance in favour of the plaintiffs pursuant to the suit agreement to sell – Exh.A. The Court Receiver is directed to hand over possession of the suit land to the plaintiffs and then stand discharged after accounting is over.

In the event it is found that execution of registered conveyance or transfer of the suit property in favour of the plaintiffs or either of them is impossible then decree as prayed for in the alternative in terms of prayer (b) of the plaint shall be executed against the defendants.

The defendants shall pay costs of the suit to the plaintiffs and bear their own.

Decree be drawn accordingly.”

3. The said decree was challenged by the petitioner before this court by filing Writ Petition No.5763/2004. It is the contention of the petitioner that respondent No.4, in violation of the order dated 14.07.2004 and 17.08.2005 constructed compound wall next to the suit property and violated the orders passed by this court.

4. The learned counsel for the petitioner submits that this court, by order dated 14.07.2004 specifically directed the parties to maintain *status quo* in respect of the suit property i.e. 850 sq. yards. In violation of the said order the respondent No.4 constructed compound wall without obtaining any permission from this court. He submits that initially the respondent No.4 filed Civil Application for permission to construct the compound wall but same was withdrawn by them. Therefore, respondent No.4 be dealt with as per the provisions of the Contempt of Courts Act.

5. On the other hand the learned counsel for the respondent No.4 developer vehemently opposed the Contempt Petition. He submits that as on today, the plot of land being Final Plot No.463 admeasuring 850 sq. yards equivalent to 710 sq.mtr. is open. They never carried out any construction activities on the said plot. He submits that this court (Coram : S. B. Mhase, J., as he then was), by order dated 27.04.2006 in Civil Application No.1035/2006 in Writ Petition No.5763/2004 allowed the respondent No.4 to carry out construction activities in remaining area leaving aside 850 sq. yards. He submits that the respondent No.4

filed Affidavit-in-Reply dated 11.12.2015 in which the respondent No.4 specifically made a statement that as on today also the land being 850 sq.yards is lying vacant. He further submits that though the petitioner alleges that they carried out construction of compound wall, same was in their own land without affecting 850 sq. yards plot of land. Therefore, there is no question of violating the orders dated 14.07.2004 and 17.08.2005 passed by this court. Hence, there is no substance in the Contempt Petition. Same be dismissed with costs.

6. Heard both sides at length. In the present proceedings, though this court, by order dated 14.07.2004 and 17.08.2005 directed the parties to maintain *status quo* in respect of the suit property till hearing and final disposal of the Writ Petition, this court by order dated 27.04.2006 in Civil Application No.1035/2006 in Writ Petition No.5763/2004 allowed the respondent No.4 to carry out construction activities except on plot of land admeasuring 850 sq. yards. The respondent No.4 in their Affidavit-in-Reply specifically stated that the said plot is lying vacant as on today also. They also placed on record the rough sketch being Exhibit-J on page No.235 to show that the plot No.463 admeasuring 710 sq.mtr. (equivalent to 850 sq.yards) is lying vacant as on today.

7. Considering these facts, I do not find any reason to entertain the Contempt Petition for alleged violation of the orders dated 14.07.2004 and 17.08.2005 passed by this court.

8. Hence, the Contempt Petition stands rejected.

(K.K. TATED, J.)