

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 22 OF 2017

Felix D'souza	..	Petitioner
vs.		
The Municipal Corporation of Greater Mumbai & Ors.	..	Respondents

Mr. Dinesh C. Shah for Petitioner.
Ms Madhuri M. More for MCGM.

CORAM : M. S. SONAK, J.
DATE: 08 FEBRUARY 2017

P.C :

1] The petitioner alleges contempt on the part of the respondents on the ground that despite judgment and decree dated 13 January 2009 in L.C. Suit No. 2748 of 2003 in his favour, the respondents, some time in October 2016, came to demolish and in fact, demolished a part of the suit structure. Learned counsel for the petitioner states that the respondents – MCGM also issued a notice for demolition, which, covers the suit structure, which is already been protected by the judgment and decree dated 13 January 2009.

2] From the submissions made by learned counsel for the petitioner, it appears that the MCGM was basically at the site to demolish the neighbouring structure. In the course of such demolition, it is possible that the petitioner's structure has also been partly affected or damaged. Learned counsel for the petitioner states that even a portion of his compound wall has been

demolished. Learned counsel for MCGM states that there was no direction in so far as the compound wall is concerned. Be that as it may, from such circumstances, it does not appear that this is a case of any wilful disobedience of the decree made by the learned trial Judge.

3] If at all, the petitioner has sustained any damage on account of the action of the respondents, it is always open for the petitioner to take out appropriate civil proceedings before the learned trial Judge. However, this is not a fit case for invocation of the contempt jurisdiction of this court.

4] It is however clarified that such non interference on the part of the court is not to be construed by any of the respondents as a licence to wilfully or intentionally flout the decree which obtains in favour of the petitioner. Contempt jurisdiction is not being exercised because *prima facie*, it appears that, the structure of the petitioner was damaged in the course of demolition of the neighbouring structure and therefore, it cannot be said that there was any wilful or intentional disobedience of the decree. For the loss, if any, that the petitioner may have sustained, it is always open for the petitioner to take out appropriate civil proceedings.

5] This contempt petition is therefore disposed of.

(M. S. SONAK, J.)