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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION (ST) NO. 35679 OF 2016

Mohini Vijay Kalantri (through POA Holder Mr
Mahendra Laxminarayan Kalantri) ...Petitioner
Versus
Municipal Corporation of Greater Bombay
(Through the West Yard) ...Respondent

Mr Deepak Pandey, for the Petitioner.
Mr NV Walawalkar, Senior Advocate, a/w Mrs Madhuri More, for
the Respondent No. 1- BMC.

CORAM: G.S. PATEL, J
DATED: 4th August 2017

PC:-

1. The matter was substantially heard yesterday. The contempt Petitioner alleges that the Municipal Corporation of Greater Mumbai (“MCGM”) has wilfully and deliberately disobeyed the order dated 5th December 2016 of Mr Justice GS Kulkarni passed in Appeal from Order St No. 31037 of 2016. It is best perhaps to set out that order in full. It is not a long order:

“1. Heard Mr.Nargolkar, learned Counsel for the Appellant, Mr.Walawalkar, learned Counsel for Respondent No.1Corporation and Respondent No. 2 in person.

2. After this appeal was heard for some time, Mr.Nargolkar submits that by an order dated 2 September 2016 passed by the Hon'ble Minister (Urban Development) the Appellate Authority, the regularization application as submitted on behalf of the Appellant has been restored to the Municipal Corporation for re-examination and for fresh orders. Mr. Walawalkar, learned Senior Counsel for the Municipal Corporation has also drawn my attention to a communication dated 22 September 2016 addressed by the Executive Engineer, Building Proposal, H Ward, informing the Appellant and some other parties that though the earlier regularization proposal as filed by the society and also by some of the private parties were decided, however in pursuance of the directions of the Hon'ble Minister (Urban Development) if a fresh application/proposal is submitted, the same would be examined by the Municipal Corporation and further appropriate decision would be taken.

3. The dispute in the present appeal pertains only in respect of Garage No.2. **The contention as urged on behalf of the Appellant is that same was part of the original plans as also there are documents available with the Appellant to show that the garage structure is in existence since 1982. It is also the Appellant's contention that the Appellant was authorised to construct the said garage structure. Thus Mr.Nargolkar would submit that in pursuance of the said order passed by the Hon'ble Minister and the further communication as being placed on record on behalf of the Municipal Corporation (dated 22 September 2016), the Appellant shall approach the Competent Authority of the Municipal Corporation by filing a fresh proposal for regularization as would be permissible under Section 53(3) read with Section 44 of the Maharashtra Regional and Town Planning Act,1966. Mr.Nargolkar**

states that a comprehensive application as per rules would be made for regularization of garage No.2 only. The submission of Mr.Nargolkar in the facts and circumstances deserves to be accepted. **Accordingly the Appellants are permitted to make an application for regularization to the Competent Authority of the Municipal Corporation namely the Executive Engineer, (Building Proposal Department), Western Suburb, 'H' Ward. The application be made within a period of two weeks from today. The Competent Authority namely the Executive Engineer, (Building Proposal Department), Western Suburb, 'H' Ward shall consider the application/proposal for regularization as made by the Appellant within a period of four weeks from the submission of the application/proposal.** Respondent No.2 would be permitted to appear at the hearing of the said application. **Mr.Nargolkar states that as the Appellant has decided to approach the Municipal Corporation by a regularization application, no plea of a separate notice being issued under the provisions of the M.R.T.P. Act would be taken on behalf of the Appellant.**

4. The Competent Authority of the Municipal Corporation shall consider and decide the regularization proposal of the Appellants in accordance with law without being influenced by any orders passed earlier. The Corporation is at liberty to seek any clarification or documents from the Appellant if the Competent Authority feels necessary.

5. As the Appellant intends to make a regularization proposal as per the provisions of M.R.T.P. Act, the Respondent Corporation shall not take any coercive action till the communication of decision on the said regularisation application/proposal, to the Appellant.

6. In the circumstances the Appeal from order accordingly would not require any further adjudication. It is accordingly disposed of in the above terms. No costs.

7. In view of the above position, Mr.Nargolkar on instruction of the Appellant prays for withdrawal of L.C.Suit No.2336 of 2014 before before the City Civil Court, Bombay. The suit is accordingly permitted to be withdrawn and disposed of as such.

8. Civil Application would not survive and is accordingly disposed of.

9. Office to forward this order to the Registrar, City Civil & Sessions Court at Mumbai for recording the disposal of L. C. Suit No.2336 of 2014."

(Emphasis added)

2. As noted above, the dispute is in relation to the contempt Petitioner's claim to garage No. 2 in a building known as Wahedna CHS on CTS No. B/12 to 15, 75, Hill Road, Bandra (West), Mumbai 400 050. The contempt Petitioner claims to be occupying Flat No. 501 in that building.

3. Before GS Kulkarni J, as the foregoing extract shows, the contempt Petitioner's contentions were two-fold. First, that the suit garage was authorized; and second, that the contempt Petitioner would apply for realization in accordance with law. In this context, paragraph 3 of the order is of vital importance, for it was here said on behalf of the contempt Petitioner that a "*comprehensive application as per rules would be made for regularisation of garage No. 2.*" This is of signal importance to this case because as we shall see

not only was the application not comprehensive, but it was also not in accordance with the Rules.

4. The contempt Petitioner was, therefore, permitted to make such an application for regularisation. The Court specifically directed that the application be made to the Executive Engineer, Building Proposal, Western Suburbs, “H” ward within two weeks. It further directed that it was he, the Executive Engineer, Building Proposal, Western Suburbs, “H” Ward, who would consider the application within four weeks. It was next submitted that since the contempt Petitioner was filing a regularisation application the contempt Petitioner would not raise the plea of want of notice should the MCGM take further action.

5. We come now to what actually transpired. The order is of 5th December 2016. The two-week period expired on 19th December 2016. On that day, the contempt Petitioner made an application, a copy of which is to be found at Exhibit “D”, page 21. On the face of it, this application is most emphatically not comprehensive. Exhibit “D” itself says so because there is a mention of “other necessary documents and drawings, being submitted later”. This was not what was intended. Second, the application was not made to the Executive Engineer at all but to the Assistant Engineer. It is only in the Rejoinder that it is alleged that some clerk at the MCGM forced the contempt Petitioner’s architect to delete the name of the Executive Engineer and put in the name of the Assistant Engineer. There is nothing whatever to establish this. Even assuming this was so, the architect could have pointed out from the copy of 5th December 2016 order — which was part of the enclosures to this so-

called application — that the Court itself had required the submission to be made to the Executive Engineer and no one else, and the decision was to be taken by the Executive Engineer and no one else. Third, as Mr Walawalkar points out, the application itself does not conform to the necessary rules and procedures. The Maharashtra Development Plan Rules 1970 specify the manner in which the application is to be made and the documents that are to be submitted. None of this was done.

6. The contempt petition proceeds on the footing that without notice the MCGM demolished the garage. It alleges that no hearing was given and no order was passed.

7. There are very many problems with this submission. First, the contempt Petitioner had agreed not to take plea of want of notice. Next, it was for the contempt Petitioner to make an application as required by law and to the authority named in the order, and not to make an incomplete or half-hearted attempt in some wrong name. That seems, *prima facie*, nothing but an attempt to buy time. If there was no compliance with the 5th December 2016 order by the Petitioner, she cannot be heard to complain of a violation of it by the Respondent, the MCGM. It is inconceivable that the Petitioner should say in contempt proceedings that it is open to her to claim ‘substantial compliance’ while demanding the strictest compliance from the MCGM. There is absolutely no reason given anywhere as to why the contempt Petitioner’s architect did not submit a complete and comprehensive proposal in the manner required by law and as mentioned in the order of 5th

December 2016. The explanation about wrongly addressing the application cannot be accepted.

8. There is an even more fundamental problem with the contempt Petitioner's approach. It seems that she has two inconsistent and mutually destructive stands. Either the structure is authorised or it is not. If authorised, there is no question of regularisation and what needs to be shown are sanctioned plans and building permissions. No attempt was made in this direction. If the structure is not authorised, then it is either completely illegal and incapable of regularisation, or it is irregular and falls within the MCGM regularisation policy. It is not for the Court to dilate on what is or is not permissible within that policy. That policy will be applied uniformly by the MCGM. It was always for the contempt Petitioner alone to show that her structure was capable of being regularised and fell within the ambit and parameters of the regularisation policy. This had to be shown at two levels. First, it had to be demonstrated to the MCGM, and that required a complete and comprehensive regularisation proposal (which the Petitioner herself had undertaken to make but did not). Second, it must now be demonstrated to this Court that this proposal was complete in all respects and was made in the form required by law to the authority mentioned in the order of 5th December 2016, despite which the MCGM proceeded with the demolition. The contempt Petitioner satisfies none of these requirements.

9. In all this, the contempt Petitioner overlooks one fundamental facet: that we are within the narrow confines of the contempt jurisdiction of this Court. What is being assessed is whether there is

wilful and deliberate disobedience of the order of the Court, and material to show contumacious conduct by the answering Respondent. In my view, given the circumstances narrated above, there is nothing whatever to show this.

10. There is no merit in the contempt petition. It is dismissed. There will be no order as to costs.

(G. S. PATEL, J)