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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION LODGING NO. 17 OF 2017
IN
WRIT PETITION NO. 2833 OF 2016

1. Sarla Dilip Somaiya and anr.

.. Petitioners

Vs.

1. The State of Maharashtra and ors.

.. Respondents

Mr. P. K. Dhakephalkar, Sr. Advocate & Mr. Rajiv Chavan, Sr. Advocate
a/w Mr. Bipin Joshi, Mr. Y. M. Chaudhari and Ms. Prerna Lalchandani for
petitioners.

Mr. P. G. Lad for respondent no.4 - MHADA.

Ms. Kejali Mastakar for MCGM.

Mr. M. P. S. Rao, Sr. Adv. a/w Mr. Vivek Walavalkar, Dhiraj Chavan i/by
Deven Dwarkadas and Partners for respondent no.7.

Ms. Kavita Solunke, AGP for State.

CORAM: NARESH H. PATIL &
DR. SHALINI PHANSALKAR-JOSHI JJ.

RESERVED ON : MARCH 31, 2017

PRONOUNCED ON : APRIL 18, 2017

P. C. [Per Naresh H. Patil, J.] :

1. In Writ Petition Lodging No. 2257 of 2016 (Writ Petition
No.2833 of 2016), the Division Bench of this Court (Coram: Ranjit More
& Anuja Prabhudessai,JJ.) on 19/10/2016 passed following order:

“ In the order dated 7th September, 2016, we recorded the statement of learned counsel for respondent No.7 to the effect that the status-quo in respect of the petitioners' structure would be maintained till next date and the same is continued till 22nd November, 2016. The petition is moved today at the instance of respondent No.7.

2. Mr. Sathe, learned senior counsel for respondent No.7, submitted that respondent No. 7 has received letter dated 10th October, 2016 from the Head-Teacher of S.I.W.S's English Primary School, Matunga requesting respondent No.7 to expedite the process of demolition of the subject structure. A copy of the said letter is taken on record. He submitted that the school has expressed an apprehension that the subject structure, and especially, the wall towards the school side is likely to fall thereby causing injury to the students in the school. In the light of this apprehension, the present petition is moved for clarification / permission to respondent No.7 to demolish the structure excluding the structure in possession of the petitioners.

3. Mr. Chaudhari, learned counsel for the petitioners, on instructions, stated that if the structure in possession of the petitioners is not disturbed, then, the petitioners have no objection for demolition of the remaining part of the structure. He also apprehended that while demolishing the said wall or structure, the petitioners garage may be damaged. In the event, the petitioners garage is damaged, appropriate orders

would be passed on the next date.

4. In the above circumstances, respondent No.7 is permitted to demolish the remaining part of the subject building excluding the structure in possession of the petitioners.

5. Place this petition for further orders on 22nd November, 2016.”

2. The petitioners' grievance is that in breach of the aforesaid order, the respondents-contemnors demolished part of the petitioners' premises and obstructed ingress egress of the petitioners to their premises. Respondent No. 7 filed detailed affidavit-in-reply on 22/2/2017. Paras 7, 8 and 9 of the said affidavit-in-reply read as under :-

“7. I further submit that the Contempt Petition was filed by the Petitioners abovenamed is untenable and non-maintainable as the same is filed with ulterior and mischievous motives. Further, the Petitioners have suppressed the vital and material facts while approaching this Hon'ble Court in the above Writ Petition as well as the present Contempt Petition. I crave leave to refer to and rely upon my Affidavit in Reply filed by me in the above Writ Petition, wherein I have submitted the factual position that the Petitioners have suppressed material facts before this Hon'ble

Court in as much as the Petitioner No.1 is the Plaintiff No.2 in Suit No. 2586 of 2012 filed before this Hon'ble Court by her husband Mr. Dilip Hari ram Somaiya against me and Respondent Nos. 5 and 6 for specific performance of an Agreement for Assignment of Development Rights dated 27th July, 2000. In the aforesaid Suit, the Plaintiffs therein apart from other Notices of Motion, took out Notice of Motion No. 1111 of 2016 wherein this Hon'ble Court was pleased to refuse grant of any ad-interim relief in respect of the prayers sought for vide its Order dated 29th June, 2016, on the observations made therein. Hereto annexed and marked EXHIBI "F" is a copy of the ordinary copy of the aforesaid Order dated 29th June, 2016 passed by this Hon'ble Court. I crave leave to refer to and rely upon the records and proceedings of the above Suit No. 2586 of 2012. Therefore, on these grounds the present Contempt Petition deserves to be dismissed at the threshold.

8. I therefore, say that the undertaking given by me to this Hon'ble Court got automatically over on 22/11/2016 and accordingly, I was at liberty to proceed with the full demolition of the structures standing over my property for the purpose of redevelopment. I say that from the pleadings of the Petitioners, it is clear that the Petitioners are bent upon to stall my redevelopment project on one or the other pretext.

9. I say that no harm or prejudice will be caused to the

Petitioners as their entitlement in the newly constructed building will be protected in respect of the portion over which they are holding their tenancy rights. On the contrary, great harm and prejudice will be caused to me my redevelopment project gets stalled and that is what the Petitioners want. Therefore, the balance of convenience is not at all leaning in favor of the Petitioners. So also the Petitioners are at complete failure to put forth any prima-facie case.”

3. We do find that while demolishing the structure as permitted by the Court, the contemnors ought to have taken abundant precaution not to obstruct the part of the premises occupied by the petitioners. But in view of the explanation submitted by the contemnors and in the facts and circumstances of the case, we find that no case is made out for proceeding against the respondents-contemnors as from the material placed on record, it cannot be conclusively established that the respondents – contemnors deliberately and willfully committed breach of the order dated 19/10/2016 pass by this court.

4. Contempt Petition is accordingly dismissed.

(DR.SHALINIPHANSALKAR-JOSHI,J.)

(NARESH H. PATIL,J.)