IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO.32 OF 2017
IN
WRIT PETITION NO. 491 OF 2016

Ali Akbar Adamjee Peerbhoy **..Petitioner**
Vs.
Sanjay Kamble & Ors **..Respondents**

Mr. S. G. Kudale for the Petitioner
Mrs. Geeta Shastri Addl. G. P. for the Respondent State

CORAM :R. M. SAVANT, &
SMT. SADHANA S JADHAV, JJ
DATE : 15th JUNE, 2017

P.C.

1 The above Contempt Petition has been filed on the ground that the police is not registering an offence under Section 295-A of the Indian Penal Code against the Respondent Nos.2 and 3 herein i.e. the Managing Trustees of the Sir Adamji Peerbhoy Charitable Trust and the Managing Trustee of Saifee Hospital Trust. The contempt alleged is on the basis of the order dated 2-12-2016 passed by a Division Bench of this Court in Writ Petition No.491 of 2016. Paragraph 10 of the said order reads thus :

> 10 Needless to add that Sir Adamjee Peerbhoy Trust and Saifee Hospital Trust will have to abide by the directions of the Apex Court as well as the terms and conditions on which the lease has been renewed. If according to the case of the Petitioner, if any hindrance has been caused to

> religious places as well as graveyard, it is for him to make a specific grievance in that behalf before the appropriate authority of the State Government. If any other condition including the condition No.(viii) is breached, the petitioner is free to make said grievance before the appropriate Authority. Needless to add that if any, illegality is noticed, the concerned authorities are bound to initiate action in accordance with law.

2 Hence in terms of the observations made in paragraph 10, the concerned authorities were directed to initiate action in accordance with law. The Petitioner has filed a complaint with the Director General of Police, Maharashtra, on 13-4-2016. The said complaint was in respect of encroachment of the graveyard in CTS No.37 of Girgaum Division. In view of the fact that the FIR was not being registered that the Petitioner had filed a Petition before the Division Bench of this Court being Writ Petition No.3943 of 2016. Before the Division Bench of this Court, the Learned APP appearing for the police made a statement that it is after recording the supplementary statement of the Petitioner that an appropriate action would be taken within 7 days. In terms of the said directions, the supplementary statement of the Petitioner came to be recorded on 30-1-2017.

3 In the above Contempt Petition, an affidavit has now been filed by one Sanjay Kamble, Senior Inspector of Police, V. P. Road Police Station. The affidavit concludes by stating that after completion of a thorough inquiry, it is

revealed that no offence is made out on the basis of the complaint made by the Petitioner. The process of inquiry that was carried out has been mentioned in the said affidavit. The said affidavit adverts to the fact that the grievance of the Petitioner was in respect of Survey No.37. It is mentioned that in respect of the said grievance, the letters were addressed to various authorities which have been mentioned in paragraph (m) of the said affidavit. It has further been mentioned in the said affidavit that some temporary construction was carried out to accommodate an Egyptian patient. The said temporary construction was demolished by the Saifee Hospital Trust in an around 31-1-2017 – 1-2-2017. It is further stated in the said affidavit in paragraph (p) that no signs of a graveyard were visible nor any structures or tombs were found except tomb of Sir Adamjee Peebhoy on the entire subject land. It is further stated in paragraph (q) that on perusal of the reports received from various concerned authorities, no concrete proof that there was a graveyard on the subject land was found. It is stated in the said paragraph that there is reservation of existing cemetery in DP 1001 on C.S. No.1/36 of Girgaum Division. It is further mentioned that on inquiry it was found that owner of C. S. No.1/36 as reflected in the property card, is the Manager of the burial ground of the Borah Community and the Manager was the Faiz-E Dawoodi Bohra Trust. It is lastly stated in the said paragraph that the said Faiz-E Dawoodi Bohra Trust vide its letter dated 3-5-2017 stated that it has not seen any graves on the land bearing C. S. No.1/36. Hence the police of the V. P.

Road Police Station on making inquiries and having regard to the fact that there was no material to show that there was a graveyard on C. S. No.37 did not deem it appropriate to register an FIR.

4 The Learned Counsel appearing on behalf of the Petitioner seeks to draw our attention to a building proposal sanctioned by the Assistant Engineer Building Proposal City of the Municipal Corporation of Greater Mumbai on 5-11-2016, in which plan according to the Learned Counsel appearing for the Petitioner a cemetery has been shown. It is not possible for us to draw any conclusion of the existence of a cemetery in C. S. No.37 on the basis of a building proposal which has been sanctioned by Municipal Corporation of Greater Mumbai. The police have in terms of the judgment of the Apex Court in the matter of **Lalita Kumari Vs. Government of U.P.**[1] carried out a preliminary inquiry prior to registering an FIR and have come to a conclusion that no case for registration of an FIR for any cognizable offence is made out. It was also the contention of the Learned Counsel appearing on behalf of the Petitioner that in constructing the Saifee Hospital some portion of the land in C.S. No.37 has been encroached. Judicial notice can be taken of the fact that the Saifee Hospital is in existence since last about 10 years. If that be so, obviously there cannot be contempt of the order passed by the Division Bench dated 2-12-2016. The charge of contempt cannot be brought home by a convoluted process. If the Petitioner has any grievance in respect of

1 **(2014)2 SCC 1**

the encroachment of the land which the Petitioner claims belongs to his family, the Petitioner would be at liberty to file appropriate proceedings for getting back the said land. We do not find any warrant to exercise our Contempt Jurisdiction, the Contempt Petition is accordingly dismissed.

[SMT SADHANA S. JADHAV, J] **[R.M.SAVANT, J]**