

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11478 OF 2018

**SIDDHARTH KRUSHNA JOGDAND
VERSUS
THE COMMISSIONER MUNICIPAL CORPORATION
AURANGABAD**

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Advocate for the Petitioner : Shri S. V. Jadhav

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 17th OCTOBER, 2018.

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PER COURT :

1. The petitioner is aggrieved by the judgment and order dated 31/07/2018 passed by the Civil Judge, Senior Division (Corporation), Aurangabad, by which, Contempt Petition No. 2/2015 filed by the petitioner has been dismissed.

2. I have considered the extensive submissions of the learned Advocate for the petitioner.

3. I find from the record that, by judgment dated 27/09/2010 delivered by the Trial Court in RCS No.197/2010, the Aurangabad Municipal Corporation and its officers were

directed to follow the due procedure laid down in law for removing the encroachment and without compliance of the due procedure of law the petitioner should not be harassed.

4. The petitioner preferred Civil Application No.6822/2015 in Civil Application No.10274/2014 in Contempt Petition No. 166/2014. The Contempt Petition was dismissed earlier. By order dated 15/07/2015, this Court (Coram : N.W. Sambre, J.) restored the Contempt Petition and disposed it off with liberty to the petitioner to take appropriate steps if he feels that the order dated 27/09/2010 has been disobeyed by the Corporation.

5. It is in the above backdrop that the petitioner preferred Contempt Petition No. 2/2015 before the learned Civil Judge, S.D. (Corporation Court), Aurangabad on 25/08/2015. By the impugned judgment dated 31/07/2018, the Contempt Petition has been dismissed.

6. Serious grievance is raised by the petitioner that the Aurangabad Municipal Corporation has damaged his house. I

repeatedly ask him as to which is the portion of the house that was damaged by the Corporation. The learned Advocate for the petitioner is not able to state as to whether any portion of the house has been damaged. He is unable to state what was the damage caused to which part of the house.

7. On going through the impugned judgment dated 31/07/2018, I find that this petitioner had initiated Regular Darkhast No. 6/2012 seeking execution of the order dated 27/09/2010 passed by the Trial Court. By judgment dated 27/06/2013, the execution proceedings were rejected on the ground of maintainability. The petitioner preferred Writ Petition No. 9534/2013 which has also been disposed off by this Court vide order dated 13/01/2014, by observing that the petitioner/decreed holder should show/demonstrate breach of injunction and only if such breach of injunction is proved, the petitioner may initiate appropriate proceeding.

8. The Trial Court has further observed in the impugned judgment that the petitioner could not prove as to what damage was caused by the Corporation to his house. No

evidence to prove the damage was brought before the Court. Per contra, the Corporation proved before the Trial Court that this petitioner used to dump, wooden poles and construction material in front of his house on a public road. The said material has been removed from the public road, after futile persuasion of the petitioner to remove it. The Trial Court, therefore, concluded that the petitioner has failed to indicate disobedience of the injunctory orders dated 27/09/2010.

9. In view of the above, I do not find any merit in this petition and the same is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-