

PIN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.56 OF 2017

IN

WRIT PETITION NO.9229 OF 2013

Mr.Rajram Pandurang Lote.

...Petitioner

Versus

1.Shri.U.P.S.Mandan, The Commissioner, Mumbai

Metropolitan Region & Development Authority & Ors. ...Respondents

Mr.Nitin P.Dalvi I/b. Mr.B.G.Tangsali, for the Petitioner.

Mr.D.S.Mhaispurkar I/b. Mr.Sameer M.Mangaonkar,for Respondent
No.4.

Mr.S.P.Thorat, for Respondent No.3.

Mr.A.I.Patel, AGP for Respondent No.6.

Mr.Mushtak Shaikh I/b. Kiran Bhagalia, for Respondent No.1-MMRDA.

**CORAM : NARESH H. PATIL, ACTING CJ. &
G.S. KULKARNI, J.**

DATE : 8th OCTOBER, 2018

P.C.:

1. Heard the learned Counsel for the petitioner and the
learned Counsel for the respondents.

2. The petitioner has filed the present proceedings
complaining breach of an order dated 21 October 2010 passed by this
Court in Writ Petition no.7838 of 2010. The order reads thus:-

“ The learned Counsel appearing for the Respondent No.2 Mr.Joshi submits that action for removal of the unauthorised construction has already been initiated and within a period of 5 to 6 months process of removal of unauthorised construction shall be completed.

2. In view of the aforesaid statement made by the learned counsel for the Respondent no.2, the learned counsel for the Petitioner seeks permission to withdraw this Petition. The Petition is allowed to be withdrawn by reserving rights of the Petitioner to approach this Court, if the process of removal of unauthorised construction is not completed within the aforesaid stipulated period. The Respondent No.2 is directed to submit its report to this Court after expiry of four months from today about the progress made. The Petition is dismissed as withdrawn with no order as to costs.”

3. The contention as urged on behalf of the petitioner is that under the abovesaid order, the respondent-authorities were directed to take action of removal of the unauthorised construction as put up by respondent no.5 however no such action was taken, thus the Court should proceed to take action against the respondent-authorities under the Contempt of Courts Act.

4. We have perused the record. Having noted the order dated 21 October 2010 passed by this Court, of which the contempt is alleged, we do not see that there was any mandatory direction for removal of the unauthorised construction. What is recorded in paragraph (1) of the order is merely a statement made on behalf of the Commissioner, Mumbai Metropolitan Region Development Authority that the said authority has initiated action for removal of unauthorised construction

and within a period of five to six months the process of such removal shall be completed. The petition was permitted to be withdrawn by the petitioner on that statement with liberty to the petitioner to approach this Court if the process of removal of unauthorised construction is not completed within the said period and the status report in that regard was directed to be filed.

5. As the facts unfold, we observe that the said order passed by this Court did not adjudicate on the rights of respondent no.5 namely Sadanand Tukaram Kadu alias Kadav whose construction was complained to be unauthorised by the petitioner. It is not in dispute that respondent no.5 had applied for regularization of the unauthorised construction to the then appropriate authority namely respondent no.1- Mumbai Metropolitan Region Development Authority (for short 'MMRDA'). The said proposal was rejected by the MMRDA, against which an appeal was preferred by respondent no.5 before the State Government. The State Government by an order dated 31 May 2016 rejected the said appeal. This rejection is challenged by respondent no.5 which is subject matter of challenge in Writ Petition no.7228 of 2017, which is also placed before us today.

6. It is not in dispute that in the interregnum the MMRDA ceased to be the planning authority and the Kalyan-Dombivali Municipal

Corporation-respondent no.2 was notified as a planning authority for area in question. In view of this change in the norms on which the respondent no.5's regularization application was rejected by the earlier planning authority namely by MMRDA, and the said norms being no more applicable, respondent no.5 has now preferred a fresh regularization application with the new planning authority - Kalyan-Dombivali Municipal Corporation. The said application is stated to be pending.

7. In the above circumstances, we do not find that there is any willful disobedience on the part of the Official of respondents not to demolish the alleged unauthorised construction of respondent no.5. We also cannot read the order dated 21 October 2010 passed by the Division Bench in the manner the petitioner contends.

8. Though the parties have not argued, we cannot be oblivious of another aspect, namely the petitioner approaching the Court invoking the contempt jurisdiction after almost seven years of the order passed by this Court. This petition was filed in February, 2017. Considering the nature of the orders passed by this Court in the context of the provisions of Section 20 of the Contempt of Courts Act, which mandates approaching the Court within a period of one year, in our opinion, this petition would be certainly time barred.

9. The contempt petition is accordingly rejected.
10. Needless to observe that all the contentions of the parties on the pending regularization application, as also the contentions in Petition No.7228 of 2017 are expressly kept open.

[G.S. KULKARNI, J.]

[ACTING CHIEF JUSTICE]