

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO. 189 OF 2017

Vinod Saraf & Anr.

...Petitioners

Versus

State of Maharashtra & Ors.

...Respondents

Mr. Chaitanya Bhandarkar, for the Petitioners.

Mrs. R.A. Salunkhe, AGP, for the Respondent No. 1-State.

Mr. Sandeep V. Marne, for the Respondents No. 2 and 3.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 19 June 2018

ORDER :

1. Shri. Ambarish R. Patnigere, the Deputy Municipal
Commissioner (Encroachment), Navi Mumbai Municipal

Corporation has tendered an Affidavit dated 18th June 2018. In paragraphs 4 and 5 of the said Affidavit, it is stated thus:-

“(4) I further say that, without going into the issues as to whether violation of law laid down by this Hon'ble Court in another case would amount to contempt of this Hon'ble Court or not, I respectfully submit that it was the responsibility of Navi Mumbai Municipal Corporation to implement the directions in the judgment dated 09.02.1996 in Writ Petition No. 4765 of 1995. The present Respondents undertake to follow the directions in judgment dated 09.02.1996 passed by this Hon'ble Court in Writ Petition No. 4765 of 1995 in all cases. I also tender unconditional apology on behalf of officers who had issued notices dated 08.07.2016 and 05.08.2016.

5. *I further say that the notices dated 08.07.2016 and 05.08.2016 appear to have been issued by the concerned Ward Office, 'A' Ward, Belapur with approval of the then Deputy Municipal Commissioner (Encroachment) merely on the basis of the language of Section 478 of the Maharashtra Municipal Corporations Act, 1949, without taking into consideration the directions in the judgment dated 09.02.1996. Possibly, the concerned Ward Officer and the then Deputy Municipal Corporation (Encroachment) was not aware about directions of this Hon'ble Court in judgment dated 09.02.1996. In these circumstances, unintentional violation of the part of the said officials of directions of this Hon'ble Court, deserves to be pardoned."*

2. In paragraph 6, there is an undertaking given on

behalf of the Municipal Corporation to follow the directions of this Court in the judgment and order dated 9th February 1996. As regards the nature of construction which was demolished, in paragraph 8, there are certain factual allegations regarding extent of illegal construction carried out by the Petitioners.

3. However, it is an admitted position that for challenging the notices dated 8th July 2016 and 5th August 2016 issued by the Municipal Corporation, a Writ Petition has been filed by the Petitioners which is pending in this Court. Moreover, relief of reconstruction of the structures has been prayed for in the said Writ Petition.

4. Now, when the Municipal Corporation has accepted the mistake and has given an undertaking to follow the directions contained in the judgment and order dated 9th February 1996, the question is whether an action under the Contempt of Courts Act, 1971 should be initiated against the Officers of the Municipal Corporation. In paragraph 5 of the

Affidavit, the Officer has sought pardon.

5. From paragraphs 7 and 8, it appears that the case of the Municipal Corporation is that considering the extent and seriousness of alleged violations made by the Petitioners that the notices were issued.

6. Taking overall view of the matter, in the light of pardon tendered by the Municipal Officers on behalf of the Municipal Corporation, it is not necessary for this Court to exercise contempt jurisdiction and to take any further action against the Municipal Officers. While we say so, we must make it clear that we have made no adjudication on what is stated in paragraph 8 of the Affidavit. What is stated therein will have to be gone into by the writ Court in the Writ Petition filed by the Petitioners.

7. Accordingly, we accept the apology tendered by Shri. Ambarish R. Patnigere for himself and on behalf of the 3rd

Respondent.

8. We accept the statement made in paragraph 6 of the Affidavit as an undertaking of the Navi Mumbai Municipal Corporation.

9. Subject to what is observed above, the Contempt Petition is disposed of.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]