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

**CONTEMPT PETITION NO.87 OF 2018
IN
WRIT PETITION NO.9396 OF 2016**

1. Jagannath s/o Vinayak Pawar,
Age: 65 years, Occu: Agril.
2. Dadasaheb s/o Sukhdeo Pawar,
Age: 37 years, Occu: Agril.,
Both R/o. Chapaner, Tq. Kannad,
Dist. Aurangabad ..PETITIONERS

VERSUS

1. Shri. Santosh Bhosale,
The District Superintendent of Land Record,
Aurangabad
2. Smt. S. P. Gavit,
Deputy Superintendent of Land Record,
Kannad, Dist. Aurangabad
3. Shri. Sarangdhar Lodhe,
Village Development Officer,
Gram Panchayat, Chapaner,
Tq. Kannad, Dist. Aurangabad
4. Shri. Madhukarraje Ardad,
Chief Executive Officer,
Zilla Parishad, Aurangabad ..RESPONDENTS

Mr S. K. Chavan, Advocate for petitioners;
Mr A. M. Gaikwad, Advocate for respondent No.2;
Mr R. V. Gore, Advocate for respondent No.3;
Mr Pathan Zareff Khan, Advocate for respondent No.4

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 14th January, 2019

ORAL ORDER:

Heard learned Counsel appearing on behalf of the petitioners.

2. The grievance of the petitioners is, the order of this Court dated 6th December, 2017 is not complied with by the respondents and as such, respondents be subjected to action by holding them guilty for committing contempt of Court.

3. The petitioners have placed on record the documents running into more than 140 pages. It would be useful for our purposes to refer to the order of the Division Bench, dated 6th December, 2017, of which disobedience is alleged. Being a short order, we quote the complete text of the said order, which reads thus:-

“ Mr. Gore, the learned advocate for the respondent No. 8 submits that, though the amount is deposited by the Gram Panchayat for joint measurement, measurement is not carried out.

2. The learned Assistant Government Pleader on instructions states that, the date is already fixed for measurement. The measurement is to be carried out on 14th and 15th December, 2017.

3. Mr. Gore, the learned advocate for the Gram Panchayat and Mr. Aghav, the learned counsel for the Zilla Parishad submit

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that, depending upon report of joint measurement, further steps would be taken with regard to writ property. In view of the said statement nothing survives for adjudication.”

(Emphasis supplied).

4. It is the submission of learned Counsel for the petitioners that the wrong statement is made before this Court and impression was created with the help of wrong statement, which led this Court to dispose the petition.

5. Firstly, the order of the Division Bench, disposing writ petition is only by recording the statement of learned Counsel appearing for the respective respondents and with clear observation that nothing survives for adjudication in the petition. On the backdrop of this fact situation, to arrive at a conclusion that there is disobedience of the order of this Court and as such, action under the provisions of Contempt of Courts Act be initiated, would only be fallacy and act of presumptions and assumptions of the petitioners.

6. Secondly, if the submission of learned Counsel for the petitioners that the statement made before this Court was not in consonance with the record and as such, this Court was mislead, then in that situation, the petitioners may avail other remedies, if so advised, but certainly the contempt petition would not be the remedy, if such ground is raised.

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7. Apart from aforesaid facts, it would be also useful to refer to the affidavit-in-reply filed on behalf of respondent Nos.1 and 2. The facts, which emerged on perusal of reply of respondent No. 1 shows that the exercise for carrying out measurement was to be undertaken on 14/15-12-2017 and at the instance of the parties, this exercise was adjourned to the next dates i.e. on 29th January, 2018 and 30th January, 2018. It is further stated in the affidavit-in-reply that on 29th January, 2018, the measurement and survey have been carried out and the Surveyor has prepared the report and submitted to the Deputy Superintendent of Land Records. Similar is the statement in the affidavit-in-reply of respondent No.2. This respondent also stated that there is some delay in exercise and firstly it is due to adjournment sought for by the parties and then it is stated that the respondents tendered their unconditional apology for the delay.

8. Considering all the aforesaid facts, we are of the opinion that the petition is filed in this Court under an erroneous impression firstly and secondly, as the order is complied with in letter and spirit, nothing survives in the present contempt petition. As such, the contempt petition is disposed of accordingly.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)