

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

**CONTEMPT PETITION NO.97 OF 2019
IN
WRIT PETITION NO.12255 OF 2015**

Pawan Kumar Sharma
Age: 70 yrs, Occ: Retired,
Defense Officer R/o. Plot No.6,
KDR Farms, Co-Op.
Sharnapur, Aurangabad
Dist. Aurangabad.

..Petitioner

Versus

1. The State of Maharashtra
Through the Secretary (Smt. Abha Shukhla)
Department of Co-operation &
Textile, Mantralaya,
Mumbai-32.
2. The Hon'ble Minister for (Subhash Deshmukh)
Co-operation, Government of Maharashtra
Mantralaya, Mumbai-32.
3. The Divisional Joint Registrar (R.P. Surwase)
Co-operative Societies
Aurangabad Division
Adalat Road, Aurangabad.
4. The Taluka Deputy Registrar (S.B. Khare)
Co-operative Societies
Aurangabad
Dist. Aurangabad.
5. Raibham S/o. Mithuji Mohade (Died)
Age: 71 yrs, Occ: Retired,
R/o. Plot No.25, K.D.R. Farms
Sharnapur, Aurangabad,
Dist. Aurangabad.
6. Colonel Vithal Pitambar Chitte
Age: 55 yrs, Occu. Service,
R/o. Plot No.35, K.D.R. Farms

Sharnapur, Aurangabad.

7. Chandrakala W/o. Kisanrao Deshmukh
Age: 64 yrs, Occ: Service,
R/o. Plot No.59, K.D.R. Farms, Sharnapur,
Tq. and Dist. Aurangabad.
8. Mr. Pratap Haridas Dhopte
Age: 45 yrs, Occ: Service,
c/o. Execelize Software Pvt. Ltd. T-25
Blok C and D, M.I.D.C. Chikhalthana,
Aurangabad, Tq. and Dist. Aurangabad.

(Respondent No.1 to 8 are formal parties)

9. Pradeep Bansidhar Shinde
Age: 54 yrs, alleged chairman of
K.D.R. Farms Co-Op. Housing Society,
R/o. Plot No.502, N-2, F-Sector,
Cidco Aurangabad,
(Org. petitioner no.1).
10. Rajendra Madhukarrao Kulkarni
Age: 56 yrs, Occ. Business
R/o. Plot No.407-A, N-7
Cidco, Aurangabad. ..Respondents

...
Mr. N.L. Jadhav, Advocate for Petitioner.
Mr. S.K. Tambe, AGP for Respondent/State.
Mr. S.P. Brahme, Advocate for Respondent Nos.9 & 10.

...
CORAM : P.R. BORA, J.
RESERVED ON : 25th JULY, 2019.
PRONOUNCED ON : 06th AUGUST, 2019.

JUDGMENT:-

1. The petitioner has filed the contempt petition alleging the willful disobedience and non-compliance of the interim order dated 18.12.2015 passed by this Court in Writ

Petition No.12255 of 2015 by respondent nos.9 and 10. On 18.12.2015, this Court had passed the following order:

" Heard.

2. Notice, returnable on 12/01/2016. Learned A.G.P. waives service of notice for respondent Nos. 1 to 4. Mr. V.A. Bagdiya, learned Counsel waives service of notice for respondent No.5.

3. Rest of the respondents be served through R.P.A.D.

4. There shall be status-quo as on today."

2. Writ Petition No.12255 of 2015 has been filed by K.D.R. Farms Co-operative Housing Society Ltd against the order dated 31.01.2011 passed by the Divisional Joint Registrar Co-operative Societies, Aurangabad Division in Appeal No.23 of 2009 and the order dated 23.11.2015 passed by the Hon'ble Minister for co-operation the State of Maharashtra in Revision Application No. RVA 2011/PK 611/15 S. Vide the aforesaid orders, the registration of the K.D.R. Farms Co-operative Housing Society Ltd has been canceled.

3. It is the case of the present petitioner that he has purchased Plot No.6 from Gut No.79 situated at Sharnapur by one Sanjay Joshi, who had represented himself to be developer of the said property. It is the further case of the petitioner that said Mr. Sanjay Joshi had taken the

responsibility to provide all the amenities to the purchasers of the said plots. It is the further contention of the petitioner that the said developer, however, did not provide any of the amenities as assured, not even the basic civic amenities. It is the further contention of the petitioner that to escape from the liability of fulfilling the promises made to the purchasers of the plots alike the petitioner, the developer of the said property in collusion with other 10 persons got registered the society under the Maharashtra Co-operative Societies Act, 1960 named as K.D.R. Farms Co-operative Housing Society Ltd. After having come to know that with ulterior motive the co-operative society has been formed, the petitioner made a complaint with the Divisional Joint Registrar of the Co-operative Societies and on his complaint, the Divisional Joint Registrar canceled the registration of the society vide order dated 31.01.2011. Though the said order was challenged by Pradeep Shinde and Rajendra Madhukar Kulkarni, the Hon'ble Minister rejected the revision application filed by them and confirmed the order passed by the Divisional Registrar. Pradeep Shinde and Rajendra Kulkarni have preferred Writ Petition No.12255 of 2015 in this Court challenging the aforesaid orders and obtained the interim order from this Court which is reproduced herein-

above.

4. It is alleged by the present petitioner that under the garb of the said interim order, the respondents continued to carry out the activities under the name of co-operative society. It is further alleged that the respondents are constantly misrepresenting to various authorities and public at large that the High Court vide order passed on 18.12.2015 has permitted the continuance of the housing society and there is no bar for the housing society to carry out the activities and works in the name of Co-operative Housing Society. It is the further allegation of the petitioner that the respondents made complaint against the petitioner with the police authorities that he is causing obstructions in the works being carried out by the said K.D.R. Farms Co-operative Housing Society Ltd. According to the petitioner, the respondents have thus committed willful disobedience of the order passed by this Court. The action is therefore sought against the respondents under the provisions of the Contempt of Courts Act.

5. The respondents have submitted their affidavit in reply denying the allegations made by the petitioner. It is contended in the affidavit in reply that it was the bonafide belief of the respondents that since, this Court has granted

the order of status-quo, they were entitled to continue the activities of the housing society in the name of the housing society. The respondents have further contended that the respondents have carried out the only activities which were most necessary for the members of the co-operative society, who are having their houses in the said society. It is further contended that in carrying out the said work, the only object of the respondents was to provide the basic amenities to the respondents of the said society. It is further contended that the respondents have utmost respect for this Court and the alleged activities were carried out by the respondents under honest belief that they are entitled to do so and not with any intention to cause disobedience of the order passed by this Court. The respondents subsequently filed the additional affidavit contending therein that after being aware of the fact that the interim order passed by the High Court on 18.12.2015 is being interpreted by the petitioner in a different way and attributing disobedience on part of the respondents, the residents of the said housing society have passed a unanimous resolution not to use the name of the housing society anymore.

6. Shri N.L. Jadhav, the learned counsel appearing for the petitioner submitted that the respondents have

committed willful disobedience of the order passed by this Court on 18.12.2015. The learned counsel submitted that it cannot be accepted that the alleged members of the said society, who are respondents in the present matter are not capable of understanding the interim order passed by this Court. The learned counsel submitted that the registration of the K.D.R. Farms Co-operative Housing Society Ltd has been canceled by the Divisional Joint Registrar, Co-operative Societies, Aurangabad and the Hon'ble Minister has affirmed the said order. The learned counsel submitted that inspite of such knowledge that the registration of the housing society has been canceled, the respondents unintentionally continued to use the name of the society and to conduct the works in the name of the society. The learned counsel submitted that though in the order passed by this Court nothing has been mentioned that the respondents are permitted to continue the work in the name of the society, the respondents not only falsely represented to the various authorities that they have been permitted to carry out the said activities, misused the name of the Hon'ble Former Judge of this Court who happens to be one of the residents of the said deregistered Housing Society. The learned counsel further submitted that till today, the respondents

have not tendered any apology for the acts committed by them. In the circumstances, the learned counsel prayed for holding the respondents guilty for committing contempt of this Court and to punish them adequately for such disobedience.

7. Shri S.P. Brahme, the learned counsel appearing for respondent nos.9 and 10 submitted that none of them was having any intention to cause disobedience of the order passed by this Court as alleged by the petitioner. The learned counsel submitted that respondent nos.9 and 10 were honestly believing that by passing the order of status-quo, this Court has permitted the society to continue to carry out its regular activities. The learned counsel submitted that whatever work is alleged to have been done by these respondents in the name of the housing society is not for their personal benefit, but for convenience and benefit of all the members of the society who have their houses in the said society. The learned counsel submitted that compelling circumstances have arisen which necessitated the respondents and the co-operative housing society to take emergent steps to carry out the said work of repairing internal roads and accordingly the tenders were issued in the name of co-operative housing society. The

learned counsel submitted that while doing so, the respondents did never intend to cause any willful disobedience of the order passed by this Court.

8. The learned counsel further submitted that after having realized that some mistake had occurred on their part in interpreting the interim order of status-quo passed by this Court, the housing society and its office bearers have unanimously resolved not to any more use the name of the housing society. Relying upon the judgment of the Hon'ble Apex Court in the case of "**Ram Kishan Vs. Tarun Bajaj and Others, (2014) 16 Supreme Court Cases 204**", the learned counsel Shri Brahme submitted that the willful act is to be distinguished from an act done inadvertently and with an honest belief that the same is permitted under the interim orders. Relying upon the same judgment, it was argued by Shri Brahme that if two interpretations are possible of the order passed, disobedience of which is alleged, if the action is not contumacious, the contempt proceeding would not be maintainable. The learned counsel submitted that in the instant case, a mistake had occurred on part of respondent nos.9 and 10 in interpreting the order of status-quo and there was no intention much less the deliberate intention to cause any disobedience of the order passed by

this Court. The learned counsel, in the circumstances, prayed for rejecting the petition.

9. While replying the arguments advanced on behalf of respondent nos.9 and 10, Shri N.L. Jadhav, the learned counsel appearing for the petitioner relying upon the judgment of the Hon'ble Apex Court in the case of "***Bharat Coking Coal Limited Vs. State of Bihar, 1988 AIR(SC) 127***", submitted that respondent nos.9 and 10 are capable of understanding the scope and effect of status-quo order and were fully aware that the status-quo means to maintain the position as existing on the date of passing the order of status-quo. The learned counsel submitted that on the date of passing the order of status-quo, the society had stood deregistered and as such, respondent nos.9 and 10 were fully aware that thenceforth, they were prevented from using the name of society or to continue to work in the name of the said society. The learned counsel Shri Jadhav also cited another judgment of the Hon'ble Apex Court in the case of "***Satyabrata Biswas Vs. Kalyan Kumar Kisku, 1994 AIR(SC) 1837***." The learned counsel reiterated his request to adequately punish respondent nos.9 and 10 for committing the willful disobedience of the order passed by this Court.

10. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. As alleged by the petitioner, respondent nos.9 and 10 have committed willful disobedience of the interim order passed by this Court in Writ Petition No.12255 of 2015 on 18.12.2015. The said writ petition has been filed challenging the order passed by the Divisional Joint Registrar, which has been confirmed by the Hon'ble Minister whereby, the registration of the K.D.R. Farms Co-operative Housing Society Ltd under the provisions of the Maharashtra Co-operative Societies Act, 1960 has been canceled. The petition challenging the said orders came to be filed on 15.12.2015 i.e. within one month of passing of the said order. On 18.12.2015, the matter was for the first time brought before this Court and after hearing the learned counsel for the petitioners, this Court passed an order thereby directing to maintain status-quo as on the said date.

11. It is the contention of respondent nos.9 and 10 that they did interpret the status-quo order to mean that they were permitted to carry on work in the name of K.D.R. Farms Co-operative Housing Society Ltd till decision of the

writ petition. According to these respondents, whatever activities have been thereafter carried out were with the only intention of providing the basic amenities to the residents of the said Housing Society. The contention so raised has been seriously opposed by the petitioner. Referring to certain correspondence made, it has been argued by Shri Jadhav that absolutely false averments are made in the said correspondence and though there is no such order passed by this Court, it is mentioned by the respondents in the said order that the High Court has permitted them to keep the society functional. The learned counsel also pointed out that respondent no.9 had also exceeded the limits by using the name of the Hon'ble Former Judge of this Court.

12. The material on record reveals that tenders were invited for carrying out the repairs of the internal roads of the Society and the work was allotted to one M/s. Manjula Constructions. The publishing of the said tender and the complaint made by respondent no.9 against the present petitioner with the P.I. Daulatabad Police Station gave rise for filing of the contempt petition by the present petitioner. On the basis of the aforesaid material, it has to be determined whether respondent nos.9 and 10 willfully

disobeyed the interim order passed by this Court and therefore, can be held liable for committing the contempt of this Court.

13. After having considered the submissions advanced by the learned counsel appearing for the parties and after having perused the material on record, it does not appear to me that the acts alleged against respondent nos.9 and 10 can be said to have been done by the said respondents with deliberate intention of committing disobedience of the interim order passed by this Court. It is not in dispute that after the orders came to be passed directing de-registration of the K.D.R. Farms Co-operative Housing Society, Writ Petition No.12255 of 2015 came to be filed on 18.12.2015. The interim order came to be passed to the effect that "there shall be status-quo as on today". As has been submitted on behalf of respondent nos.9 and 10, the said order of status-quo has been interpreted by them to mean that till decision of the writ petition, the Housing Society shall remain functional. Though it has been vehemently argued by Shri Jadhav, the learned counsel appearing for the petitioner that respondent nos.9 and 10 as well as other members of Housing Society were quite aware of the real import of the interim order passed by this Court

and they are now falsely coming with the aforesaid excuses, I am not convinced with the submissions so made.

14. The order of status-quo granted by this Court on 18.12.2015 has to be read and interpreted in context with the order which was challenged in the said writ petition. As noted herein-above, the orders whereby registration of K.D.R. Farms Co-operative Housing Society under the provisions of the Maharashtra Co-operative Society Act has been canceled, are challenged in the said writ petition. In the said writ petition, if an interim order has been passed by this Court to the effect that "there shall be status-quo as on the date of passing the said order", the said interim order can be interpreted to mean that till decision of the writ petition no effect is to be given to the orders impugned in the said petition. Otherwise, the question arises, looking to the nature of orders impugned in the said petition, what could be the intention of this Court to pass such interim order that there shall be status-quo as on the date of passing the order.

15. The query was also put to the learned counsel Shri Jadhav as to how the petitioner interprets this order and if this Court has directed to maintain the status-quo as

on the said date, what position was expected to be maintained. It was the contention of the learned counsel that on the said date, the registration of K.D.R. Farms Co-operative Housing Society had stood canceled and the said position was directed to be maintained by this Court. If the interpretation made by Shri Jadhav is to be accepted, the question further arises, then what was the necessity to pass such an interim order. The said position, even otherwise was liable to be maintained even if no such interim order would have been passed.

16. Construction of the said order, therefore, must be resorted to upon, reading the same in context with the contentions raised in the petition. Considered by the said angle, the possibility of respondent nos.9 and 10 interpreting the said order to mean that the petitioners were permitted to keep the society functional in its name is difficult to be ruled out. The order of status-quo is reasonably capable of being interpreted as has been interpreted by respondent nos.9 and 10 as well as the other members of the housing society. It appears to me that such an interpretation is not impossible. In the case of "Ram Kishan" (cited supra), the Hon'ble Apex Court referring to its earlier two judgments has held that if two interpretations

are possible and if the action is not contumacious, the contempt proceeding would not be maintainable. It is also observed in the said judgment that the effect and purport of the order is to be taken into consideration in its entirety. In view of the law laid down by the Hon'ble Apex Court as above, it appears to me that if the respondents have acted on the basis of one possible interpretation of the order of status-quo and if the said actions are not contumacious, the present proceeding initiated against respondent nos.9 and 10 would not be maintainable.

17. Now it has to be seen as to which were the acts committed by respondent nos.9 and 10, so as to hold that they have committed willful disobedience of the order passed by this Court. Admittedly, the only acts which are committed by these respondents are that they floated the tender for carrying out the work of repairs of the internal roads in the name of the society and further that they made one complaint against the petitioner in the police station contending therein that the Court has permitted them to carry out the work in the name of the society.

18. It does not appear to me that the acts as are alleged against respondent nos.9 and 10 can be said to be

the deliberate conduct of the said respondents intended for floating the interim order passed by this Court. As has been held by the Hon'ble Apex Court in the case of "Ram Kishan" (cited supra), the contempt jurisdiction confer on to the law courts power to punish an offender for his willful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. The Hon'ble Apex Court has further observed that undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. It is further observed that the proceedings of contempt being of quasi-criminal in nature, standard of proof required in these proceedings is beyond all reasonable doubt or else it would be hazardous to impose sentence for contempt on mere probabilities.

19. In the instant matter, after having considered the

facts involved in the present matter from all angles, it is difficult to hold the acts committed by respondent nos.9 and 10, as alleged by the petitioner, to be contumacious.

20. For the reasons stated above, the following order is passed:

ORDER

The contempt petition is dismissed.

(P.R. BORA, J.)

Mujaheed//