

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

**CONTEMPT PETITION NO. 640 OF 2018
IN
WRIT PETITION NO. 6565 OF 2018**

Trimbak Mahtarbuwa Yadav	... Petitioner
Versus	
Fulchand Bhagwan Naikwade and others	... Respondents

....
Mr. A. M. Inamdar, Advocate for petitioner.
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CORAM : M. S. KARNIK, J.

DATED : 23rd AUGUST, 2019

PER COURT :-

1. Heard learned counsel for the petitioner.
2. The petitioner alleges breach of the order dated 27.06.2018 passed by this Court directing the parties to maintain status-quo in respect of the suit property.
3. It is the contention of learned counsel for the petitioner that the respondents have breached the order dated 27.06.2018. The respondents proceeded with the construction of the temple despite order of *status-quo*. He would invite my attention to the order dated 27.03.2019 passed by this Court in Writ Petition No. 6565 of 2018. The

issue in the writ petition was regarding encroachment on the Government land. The contention of the plaintiff was that the defendants have constructed a temple on the Government land, which is in front of the residence of plaintiff. This construction was blocking his right of way.

4. It would be pertinent to reproduce the relevant paras i.e. paragraphs nos. 7, 8 and 9 of the order dated 27.03.2019 in Writ Petition No. 6565 of 2018, which are as under:

“7. Ex-facie, I find that he can use the said width of the road even for playing a tractor. I am making these observations in view of the contention of the plaintiff that the defendants have erected the temple despite ad-interim injunctory orders and for which purpose he has filed the Contempt Petition No. 640/2018. By these observations made in this order, I am recording the space available for utilization of the plaintiff. This would rule out further encroachment or construction reducing the width of the said road as is visible from the three colour photographs.

8. Learned advocate for the respondent fairly submits that no further structure would be erected without the leave of the Trial Court or such Court where any proceeding is pending. He, further, adds that during the Saptah (seven days of religious rites) which occurs approximately twice a year in the month of Shravan Mass and Chaitra Mass, there would be a gathering of devotees and tents would be erected.

9. I find that such religious expression need not be curbed at an interim stage. In this Country of religious people, I do not find it appropriate to direct the defendant that he should not hold such Saptah. However, such Saptah can be controlled by ensuring that the villagers will not block the entire path which is used by the plaintiff which would virtually lock him in

his land and house. As such, a day prior to the Saptah, they may erect the shed for protecting the devotees from heat and rain. Such sheds which would be erected, shall be removed immediately after the Saptah is over, without any pretext.”

5. In view of the order dated 27.03.2019 passed by this Court, in my opinion, no useful purpose will be served in entertaining the present contempt petition.

6. This Court has observed that the petitioner can use the width of the road even for plying a tractor. No doubt, the Court has observed that the observations made are in view of the contention of the petitioner that the defendants have erected the temple despite ad-interim injunctory orders and for which purpose he has filed Contempt Petition No. 640 of 2018.

7. Considering the alleged encroachment is on Government land and the suit is pending and also taking into consideration that this Court has observed that there will be no further encroachment it would not be necessary to entertain the present contempt petition.

8. The suit of the plaintiff is pending. The plaintiff is claiming easementary rights and all issues can be adjudicated by the trial Court. This Court has already recorded the statement of the respondents that no further structure will be erected without leave of the trial Court or such Court wherein the proceedings are pending.

9. In this view of the matter, the contempt petition need not be proceeded with.

10. It is made clear that any construction made by the respondents till 27.03.2019 will be subject to the outcome of the suit.

11. With these observations, the contempt petition is dismissed.

[M. S. KARNIK, J.]

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