

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

**CONTEMPT PETITION NO.682 OF 2018  
IN  
WRIT PETITION NO.5214 OF 2017**

Jalindar S/o Uttamrao Avhad  
Age: 59 years, Occ.:Agril,  
R/o Mohta, Tq.Pathardi  
Dist.Ahmednagar

PETITIONER

**VERSUS**

1. The State of Maharashtra  
Through the Collector,  
Ahmednagar
2. Shri Dr. Vikramsinh Bandal  
Sub-Divisional Officer,  
Pathardi, Dist.Ahmednagar
3. Shri Namdeo Patil  
Tahsildar,  
Pathardi, Dist.Ahmednagar
4. Shri Pankaj Fhegade  
District Superintendent  
Land record, Ahmednagar
5. Shri Bhimrao Onkar More  
Deputy Superintendent  
Land Record, Pathardi,  
Dist.Ahmednagar
6. Shri Dhananjya Kolekar  
Chief Officer,  
Municipal Council,Pathardi  
Tq.Pathardi, Dist.Ahmednagar

RESPONDENTS

Mr V.A. Dhakne, Advocate for the petitioner;  
Mrs M.A. Deshpande, A.G.P. for respondent-State;  
Mr Naiknaware, Advocate for respondent Nos. 4 & 5

**CORAM : PRASANNA B. VARALE &  
ANIL S. KILOR, JJ.**

**DATED : 26th NOVEMBER, 2019**

**ORAL ORDER:**

By our detailed order dated 25<sup>th</sup> September, 2019, we have called upon respondent No.5 - Deputy Superintendent of Land Records to file affidavit in reply showing compliance of the directions of this Court. On a grievance is raised in the contempt petition that in spite of the order of this Court dated 13<sup>th</sup> July, 2017, respondent authorities, more particularly Deputy Superintendent of Land Records is not undertaking an exercise of measurement of the land.

2. The thrust of the submission of learned Counsel for the petitioner was, an undertaking to this Court by

way of affidavit in reply through Mr. Bhimrao Onkar More dated 10<sup>th</sup> July, 2017. While passing the order dated 25<sup>th</sup> September, 2019, we have referred to the fact-situation that notices were issued for undertaking of an exercise of measurement of land on 24<sup>th</sup> July, 2017 and said exercise was undertaken only in presence of representative of Chief Officer of Municipal Council, Pathardi.

3. Learned A.G.P. invited our attention to the compilation of the documents. The communication addressed to learned Government Pleader dated 5<sup>th</sup> November, 2019 clearly shows that when the petitioner was informed by issuance of communications dated 4<sup>th</sup> October, 2019 and 10<sup>th</sup> October, 2019 to submit necessary documents for undertaking an exercise of measurement of land, the petitioner failed to show any response. Ultimately, the authority was required to establish contact with the petitioner through cell phone. When the authority on 14<sup>th</sup> October, 2019 proceeded on the spot to undertook the

exercise of measurement, they were obstructed by certain persons including the applicant who had presented the intervention application in this Court and whose application is dismissed by us by a separate order today itself.

4. The authority was left with no choice but to record the statement of Surveyor and statement of the petitioner and submit the report to Police Inspector of Police Station, Pathardi for seeking protection to undertake the exercise of measurement of land. Copy of the said report is annexed to the compilation submitted to this Court through learned A.G.P. Now, coming to the core issue as to whether the respondent authorities wilfully and deliberately committed breach of the order of this Court, our reply to this issue is in negative.

5. We may assign our reasons for arriving to that conclusion. First reason as stated above is, non co-operation by the petitioner and secondly, obstruction

created in the exercise of measurement which was not certainly an act of the respondent-authority, but respondent-authority was sufferer of such obstruction. The second reason is clandestine approach of the petitioner himself. The petitioner had filed petition seeking directions for carrying out the measurement exercise. Interestingly enough, in the affidavit-in-reply filed in this Court through Mr. Bhimrao Onkar More, Deputy Superintendent of Land Records, Pathardi Tq.Pathardi, Dist.Ahmednagar dated 10th July, 2017, it is specifically stated that the petitioner had never approached to the authority for measurement by depositing requisite fees as required thereof. This statement is reiterated in paragraph No. 6 of the affidavit-in-reply. It is stated in paragraph No.7 of the affidavit-in-reply that Chief Officer, Municipal Council, Pathardi has deposited the amount of fee vide challan dated 6th July, 2017. On payment of fees and the same being feed to the E-measurement system, the measurement date is generated as 24th July, 2017 and the statement was made that on the

scheduled date, measurement of the said land shall be carried out.

6. Though the learned Counsel for the petitioner placed heavy reliance on the observations of this Court that the affidavit of Mr. Bhimrao Onkar More, Deputy Superintendent of Land Records is accepted as an undertaking to this Court, the petitioner cannot be permitted to take the benefit of the order only picking up the convenient part of the order and we may state here that in the order dated 13th July, 2017, Division Bench was pleased to observe " We accept each of the statement made in the affidavit of Bhimrao S/o Onkar More dated 10th July, 2017, meaning thereby this Court also accepted the statement of the deponent that the petitioner had not deposited requisite fee till time of filing of the affidavit in reply in this Court. This undertaking will have to be read also on the backdrop of the fact that it was stated in the affidavit-in-reply that the requisite fees was deposited by the Municipal

Council, Pathardi, towards the measurement through challan dated 6th July, 2017, as such, the undertaking could be only effective insofar as the exercise to be undertaken of measurement on the application of the Municipal Council which was supported by payment of requisite fees and presenting the challan and in turn, generating E-receipt.

7. At the cost of repetition, we state that the only party depositing measurement fees is the Municipal Council and this is reflected even from the affidavit-in-reply filed in this Court dated 3rd July, 2019 through respondent No. 5- Mr. Bhimrao Onkar More. Copy of the application annexed to the affidavit-in-reply clearly shows that the applicant for seeking measurement is the Chief Executive Officer of Municipal Council, Pathardi and not the petitioner. At page No. 57, the copy of challan is placed on record and the perusal of the challan again shows that the name of the person depositing the fees and it is Chief Officer, Nagar

Parishad, Pathardi.

8. One more interesting feature which came to our knowledge is that the petition filed on 4th April, 2017 with a prayer clause (B) - the directions to respondent No. 5 - Deputy Superintendent of Land Records, Pathardi, Dist. Ahmednagar to do measurement of the residential plots and open space in survey No.82/8+9+10+11 situated within the area of Municipal Council, Pathardi in accordance with the sanctioned Lay-out plan bearing outward No. 447 dated 7th March, 1989 issued by the Assistant Director, Town Planning, Ahmednagar, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

and prayer clause (E) -to restrain respondent No.7 the Chief Officer, Municipal Council, Pathardi, Dist. Ahmednagar from granting the construction permission and from allowing to do construction on the residential plots in Survey No.82/8+9+10+11 situated within the area of Municipal Council, Pathardi, pending hearing and final

disposal of the writ petition.

9. The affidavit-in-reply filed on behalf of respondent No.5 dated 3rd July, 2019 shows that the petitioner has deposited requisite fees on 9th June, 2017, meaning thereby the fees was deposited post filing the petition and again interestingly enough, the fees is deposited only against the measurement of plot No.2 out of survey No.82/8+9+10+11 whereas, the petitioner approached this court for measurement of entire survey with an interim prayer of restraint to the authority in respect of entire survey No. 82.

10. Considering all these facts, we are of the opinion that it is the petitioner who is approaching this Court not with clean hands but is only interested in putting pressure on the authorities without even depositing the requisite fees for measurement and then the order of this Court dated 13th July, 2017 is again used as a tool to call upon the authorities before this

Court for no convincing reasons. We are of the opinion that the contempt petition is thoroughly meritless. No fault can be found with the respondent authorities. Contempt Petition deserves to be dismissed and same is accordingly dismissed.

**[ANIL S. KILOR, J.]**

**[PRASANNA B. VARALE, J.]**