

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

**918 CONTEMPT PETITION NO.735 OF 2019
IN WP/11163/2018**

SAMAD KHAN S/O. SATTAR KHAN PATHAN
VERSUS
ASTIK KUMAR PANDE, DISTRICT COLLECTOR, BEED AND
OTHERS

Advocate for Petitioner : Mr.S.S.Kazi

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

DATE: 5th November, 2019

PER COURT:-

1. Heard Mr.S.S.Kazi, learned counsel for the petitioner extensively. On the grievance that the order of this Court dated 27.03.2019 passed in Writ Petition No.11163 of 2018 is not complied with, the present Contempt Petition is filed.

2. Perusal of the order dated 27.03.2019 shows that the grievance of the petitioner was in respect of non-removal of an encroachment. The Division Bench of this Court in the order dated 27.03.2019, took note of the statements made in the affidavit-in-reply filed on behalf of Tahasildar, Georai. It would be necessary for our purpose to refer paragraph

No.7 of affidavit-in-reply, which is already quoted in the order of this Court passed on 27.03.2019. The statement in paragraph No.7 reads thus:-

“7. I say and submit that Police force is engaged in election duty. After receipt of report from Dy.S.L.R., Georai and after completion of General Loksabha Election action will be taken for removal of encroachment.”

3. The Division Bench of this Court by accepting the aforesaid statement as an undertaking to the Court observed that “In view of the said statement, the grievance raised by the petitioner is attended to by the respondent” **(emphasis supplied by us)**.

4. There cannot be any dispute that the statement in paragraph No.7 of the affidavit-in-reply was on the backdrop of two facts; firstly the police force at the relevant time was occupied in election duty and secondly and most importantly referring a contingency i.e. want of report from Dy.S.L.R..

5. Mr.Kazi, learned counsel for the petitioner referring to the representations placed on record submitted before this

Court that now the general elections are over and inspite of the order of this Court, concerned Authority is not taking any step for removal of encroachment and as such this act of the Authority is an act of disobedience of the order of this Court.

6. Though, the submission of Mr.Kazi looks attractive at the first breath, it is not acceptable for the reasons; firstly that, the Division Bench of this Court in clear and unambiguous words observed that in view of the statement, the grievance raised by the petitioner is attended to by the respondent, meaning thereby the grievance no more survives and secondly, the statement in paragraph No.7 of the affidavit-in-reply as stated above was conditional and these two contingencies were that firstly general election of Loksabha and secondly, want of receipt of report from Dy.S.L.R.

7. The petitioner neither made any statement in the petition nor submitted any document alongwith the Contempt Petition to show that the second contingency condition is also complied with and the report from Dy.S.L.R.

is received by the Authority. If this report is not received by the Authority, the Authority cannot be blamed with an allegation of non-action. Considering this very fact, we are of the opinion that the petition is filed only on assumptions and presumptions of the petitioner. The petition is thus merit-less and deserves to be dismissed at the threshold and is accordingly dismissed.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

SPT