

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

CONTEMPT PETITION NO.763 OF 2019
IN
PUBLIC INTEREST LITIGATION NO.146 OF 2016

Manohar Chimaji Chalak

..Petitioner

Versus

The State of Maharashtra and ors.

..Respondents

Mrs Manjushri V.Narwade, Advocate for petitioner
Mr S.S. Dande, A.G.P. for respondents no.1 to 3

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

DATE : 18.11.2019

ORAL ORDER :

1. Heard learned Counsel for the petitioner on a grievance that the respondents have committed an act of willful disobedience of the order of this Court, the present petition is filed in this Court. On perusal of the petition, we are of the opinion that petition suffers on many a lacunae. Firstly, the petitioner failed to add proper respondents in the Contempt Petition. Perusal of title clause would show that the authorities of State of Maharashtra are being referred by the posts, they are occupying and holding and not a single respondent is a respondent-party by name so as to comply with the preliminary requisite of the Contempt Petition.

2. Coming to merits, it is the submission of the petitioner that the respondents have committed an act of willful breach of the order of this Court. Perusal of order of this Court dated 1.3.2017 shows that two fold directions were sought for in the Public Interest Litigation being first direction was to remove the encroachment in an area Survey No.60, situated within the Municipal jurisdiction of Georai,

District Beed and secondly, directions not to allow any illegal construction on it. In response to notice issued by this Court, the respondents no.2 and 3 i.e. the Collector, Beed, District Beed and the Tahsildar, Georai, District Beed filed their affidavit-in-reply. The Division Bench of this court was pleased to record the statement in paragraph 6 of the reply in paragraph 2 of the order and the same reads thus :

“6. I say and submit that the encroachment on the land Sy.No.60 will be removed within one year after following due process of law. Because, at present there are pakka construction on the said survey land and after examining and verifying and after measuring the entire land i.e. Sy.No.60 of village Georai, necessary steps will be taken for removal of the encroachment from the said survey number.”

3. With reference to this statement, the Division Bench, in clear and unambiguous words observed that, ‘in that view of the matter, the grievance of the petitioner stands redressed. PIL is accordingly disposed of. Respondent no.4 shall not give any permission for construction on the aforesaid land’.

4. The submission of the learned Counsel appearing for the petitioner was, in spite of directions of this Court, the authorities – respondents no.3 and 4 are not taking any steps for removal of encroachment. We can safely say that this submission is nothing but a misconception carried by the petitioner under an assumption and presumption, that there is some direction issued by this Court to the respondents whereas, in fact, this Court had not issued any directions

to the respondents. At the cost of repetition, we state that this Court, on perusal of the affidavit-in-reply and more particularly, statement in paragraph 6 was of clear opinion that the grievance of the petitioner stands redressed meaning thereby there was a full stop to the proceeding, which was submitted in this Court in the nature of Public Interest Litigation. Therefore, we are of a clear view that the submission of learned Counsel for the petitioner that the respondents-authorities are not taking any steps so as to remove the encroachment, in spite of directions issued by this Court, is only an assumption and presumption. We further state that the petitioner is not coming before this Court insofar as any other act, which may fall in the expectation of this Court in paragraph 3 that the respondent no.4 was not given any permission for construction on the aforesaid land. It is not the case of the petitioner that any permission is given for construction.

5. We further state that this Court had only referred to the statement made in the affidavit-in-reply and there is no observation of this Court that the statement made in paragraph 6 of the affidavit-in-reply is accepted as an undertaking to this Court.

6. Thus, taking overall view of the matter, we are of the clear opinion that the petition is thoroughly merit-less and deserves to be dismissed at the threshold and the same is accordingly dismissed.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)