

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO. 105 OF 2016

Mrs. Sharifa Badruddin Shaikh ... Petitioner

V/s.

M/s. K.S. Hind Developers And Ors. ... Respondents

**WITH
CONTEMPT PETITION NO. 74 OF 2016**

Mr. Mohammed Sharif Abdul Hamid Shaikh ... Petitioner

V/s.

M/s. K.S. Hind Developers And Ors. ... Respondents

**WITH
CONTEMPT PETITION NO. 108 OF 2016**

Mrs. Aamir Inayat Shaikh ... Petitioner

V/s.

M/s. K.S. Hind Developers And Ors. ... Respondents

**WITH
CONTEMPT PETITION NO. 360 OF 2016**

Mrs. Rais Miya Babu Shaikh ... Petitioner

V/s.

M/s. K.S. Hind Developers And Ors. ... Respondents

**WITH
CONTEMPT PETITION NO. 362 OF 2016**

Mrs. Nazema Mohammed Yusuf Shaikh ... Petitioner

V/s.

M/s. K.S. Hind Developers And Ors. ... Respondents

Mr. Dharam Sharma I/b. Dharam And Co for Petitioner.

Ms. Eventa Gonsalves a/w Reyden Gonsalves for Respondent No. 1 to 4.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 6th AUGUST 2019.

P.C.:-

1. The petitioners in this contempt case are the tenants; the respondents are the landlords. Focusing on what is essential for this contempt case, I may note that the landlords and the tenants entered into an agreement in July 2013. Under that agreement, the landlords as the developers undertook to demolish the dilapidated building and raise a new structure. Once that is done, the petitioner-tenants must be re-inducted.

2. Both the parties acknowledged that the process of demolition and reconstruction would take time because the

respondents had to secure permission from authorities. So the agreement contemplated a method of compensation, and the compensation was on the grounds that until the tenants would be re-inducted into the to-be-constructed building, they have to accommodate themselves as tenants elsewhere.

3. Initially the developers honoured the contractual terms and paid monthly compensation to the tenants. But later they faulted. In that context, given the developers commitment before the courts below and this Court to adhere to the contractual terms, the tenants have filed this contempt petition.

4. Shri Dharam Sharma, the learned counsel for the tenants, has submitted that the developers have willfully violated the agreement terms, though those terms are part of judicial directives and judgments. According to him, if the developers had faced any unforeseen difficulties, they would have sought the contractual terms modified or revised. They did neither.

5. Shri Dharam Sharma has placed on record a calculation-memo to demonstrate the amount due from the developers to the tenants under the agreement.

6. In response, Ms. Eventa Gonsalves, the learned counsel for the developers, has submitted that every contractual violation—even that of a judicial directive—does not amount to an act of contempt. According to her, as defined under Section 3 (2) (b) of Contempt of Courts Act, any violation to be termed contemptuous must be willful. In that context, Ms. Gonsalves has enlisted the difficulties the developers have faced after their entering into the agreement.

7. To elaborate, Ms. Gonsalves has submitted that soon after the developers and the tenants contracted, in some other similar matter the Supreme Court issued certain directives. Those directives concerned the norms for raising new structures in Mumbai. As per those directives issued in December 2013—that is within six months after the parties contracted—the land on which the developers proposed to reconstruct became insufficient. So they applied to Brihanmumbai Municipal Corporation (BMC) for amalgamating the

adjacent land. That application took time.

8. Besides that, BMC issued various circulars beginning from December 2013 till 2015 and beyond modifying the conditions of construction in tune with the Supreme Court's Judgment. So Ms. Gonsalves contends that the delay was beyond the developers' contemplation and control, too. Had they been mere builders, they would have abandoned the project. But as they are also the owners, they are trying their best to complete the project, expeditiously.

9. Finally, Ms. Gonsalves has submitted that there are about 29 tenants. Of those 29, only five—that is, the petitioner here—have been agitating. The remaining 24 have accepted an arrangement under which the developers have continued to pay Rs.17,500/- to the tenants. It was with an assurance that the balance Rs.3,500/- would be paid later.

10. Besides submitting the developers' calculation memo, Ms. Gonsalves has submitted that the developers do not intend to violate their contractual commitment. Given the unforeseen developments

and financial difficulties, they only wanted more time. In other words, Ms. Gonsalves, on instructions, has assured the Court that the developers will now continue to pay the tenants on a par with the other tenants. The balance amounts due to the tenants under the agreement will also be paid in four or five installments as this Court may permit.

11. In reply, Shri Dharam Sharma, the learned counsel for the tenants, has asserted that the developers have indeed been willfully violating their contractual obligations. Then, he has submitted that the developers have consciously undertaken the project with a profit motive. And if they find any difficulty in its execution, they cannot blame the tenants.

12. In elaboration, Shri Dharam Sharma has submitted that each petitioner has been paying about Rs. 25,000 per month as rent because they have to stay outside until the project is completed. Unless they are paid at least that amount, they cannot sustain themselves. The balance, according to him, may be paid later, in to-be-agreed installments.

13. Indeed, contempt proceedings are quasi-criminal. The violation must be willful, and the burden on the petitioner is heavy to prove that the other party is guilty of contemptuous conduct. Mere violation of contractual terms will not amount to willful disobedience or disregard of either judicial directives or undertakings.

14. That said, I noticed the developers willingness to abide by the contractual terms but in a deferred manner. So I advised both the counsel to use their good offices and bring about, if possible, an amicable settlement between the parties. They accepted the suggestion.

15. Both the parties, helped by their respective counsel, have arrived at an amicable settlement.

16. So, besides placing on record the terms of settlement they have arrived at, I explicitly note, without adjudicating on the merits, that the developers will pay Rs.21,000/- per month to the tenants and continue to pay that amount until they complete the project. Besides that, the developers will pay the arrears, as already quantified by the

tenants, from July 2016 till July 2019 at Rs.25,000/- per month in 12 monthly installments. When the developers pay this amount, the amounts they have already deposited in the Court must be adjusted.

17. The amounts to be paid monthly prospectively must be in the form of post-dated cheques once in every three months, at Rs. 25,000/- per month. It must be from August 2019 onwards. To illustrate, in August 2019 the developers will give cheques for the current month and the next two months—September and October 2019. Then, again, in November, they will issue cheques for the current month and the next two months.

18. Both parties have agreed that this arrangement will continue and parties will abide by it until the project is completed and the tenants are put in possession.

19. As agreed, the tenants may withdraw the amounts lying with the registry as were deposited by the developers.

20. I place on record the Court's appreciation for the initiative the learned counsel on both sides have taken in settling the matter amicably.

21. All the pending applications and the contempt case are disposed of.

(DAMA SESHADRI NAIDU, J.)