

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 3 OF 2016**

in

WRIT PETITION NO. 399 OF 2012

Mr. Shirish Bhaskar Sathaye ... Petitioner

Versus

The Nashik Municipal Corporation and others ... Respondents

.....

Mr. Milind Sathaye for the Petitioner.

Mr. Vaibhav Patankar for Respondent Nos.1, 3 and 4.

.....

**CORAM : S.J. KATHAWALLA AND
B.P. COLABAWALLA, JJ.**

DATED : NOVEMBER 11, 2019.

P.C. :-

1. The Petitioner states that the Respondent Nos.1, 3 and 4 have committed contempt of the order passed by this Court dated 1st December, 2014, more particularly, clauses (a), (b) and (c), which are reproduced hereunder :-

(a) We accept the statements made on oath by Shri Vijay B. Shende and Shri Rohidas Mangu Bahiram in the affidavit dated 27th November, 2014 as the statements made on behalf of the first Respondent Nashik Municipal Corporation.

(b) The first Respondent Nashik Municipal Corporation shall comply with the said statements within the time stipulated in Paragraph 4 of the

said affidavit.

(c) We direct the second Respondent to provide requisite police assistance to the officers of the first Respondent Municipal Corporation for removing encroachments on the plots described in Paragraph 4 of the said affidavit upon the Officers of the Municipal Corporation producing an authenticated copy of this order before the Officer incharge of the concerned local police station."

2. In view of the above, paragraphs 4 and 5 of the Affidavit dated 27th November, 2014 filed by the Assistant Director of Town Planning and the Deputy Commissioner of Encroachment of Nashik Municipal Corporation, Nashik are relevant and therefore reproduced hereunder :-

4. We say that as shown in the map annexed to this affidavit the Respondent-Corporation, within period of three (03) months from the date of Order of this Hon'ble Court shall remove the Encroachment on the portion shown in blue (two triangles), pink (one triangle) & gray (one triangle) which forms the part and parcel of Final Plot No.105-B (T.P. Scheme No.II) and handover possession of the said Final Plot No.105-B to the petitioner. We say that necessary Police help be provided for removal of encroachment. We say that the petitioner shall accept vacant and peaceful possession of the said Final Plot No.105-B soon after intimation regarding the same is issued to the petitioner.

5. We say that as far as yellow portion shown in map annexed hereto is concerned the same is carved out of and which forms part of Original Plot No.156 and is admittedly already in possession of the petitioner and question of handing over possession of the said portion of land does not arise. Hereto annex and marked "Exh.A", is the copy of Part Plan of Town Planning Scheme (II)."

3. As regards the contention of the Petitioner that the encroachments on the

entire plot No.105-B of the Petitioner are not removed and they are not handed over possession of the entire plot No.105-B, the Learned Advocate appearing for the Corporation states that the question of handing over the entire final plot No.105-B does not arise since as set out in paragraph 5, the plot shaded in yellow colour was already in possession of the Petitioner. They have already shown their willingness to handover possession of the portion set out in paragraph 4 of the Affidavit dated 27th November, 2014, after removing the encroachments but the Petitioner has refused to take possession of the same.

4. The Learned Advocate appearing for the Petitioner states that it is incorrect to say that the possession of the plot shaded in yellow colour is not in possession of the Corporation but is in possession of the Petitioner. In support of his case, he has tried to show us some photographs of the plot and make submissions from which it is not possible to come to the conclusion that the portion shaded in yellow colour is in possession of the Corporation and not in possession of the Petitioner. In view thereof, it is difficult to decide the correctness of the submissions of the parties qua the possession of portion shaded in yellow in the Contempt Petition. It is trite that wherever the Court finds any ambiguity or is of the view that the parties were not at ad-idem whilst making statements and obtaining any order, the Court shall refrain from coming to the conclusion that the Respondent is guilty of contempt.

5. In view thereof, we do not find it appropriate to hold that the Corporation has committed willful breach of the order of this Court dated 1st December, 2014 as alleged

by the Petitioner. However, the Petitioner shall be at liberty to take out appropriate proceedings other than contempt proceedings to establish its claim against the Corporation. If the Petitioner takes out any such proceedings, the same shall be decided on its own merits. The above Contempt Petition is accordingly disposed off.

(B.P. COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)