IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO.485 OF 2019
IN WRIT PETITION NO.12658/2016

Rajabhau @ Rajendra S/o Digambar Mane
Age 49 years, Occu : Social Work & Business,
R/o HUDCO, Tuljapur, Tq. Tuljapur,
Dist.Osmanabad. ... PETITIONER

Versus

1] The State of Maharashtra
Through its Secretary
Urban Development Department,
Mantralaya, Mumbai-32.

2] The Director,
Local Fund Audit, Maharashtra State
Kokanban, New Mumbai.

3] Shri Sunil Kendrekar
The Divisional Commissioner,
Aurangabad Division,
Aurangabad.

4] The Collector, Osmanabad
District Osmanabad

5] The Municipal Council,
Tuljapur, through its
Chief Officer. ... RESPONDENTS

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Advocate Shri Adinath B.Jagtap for Petitioner.
A.G.P. Shri S.P.Sonpawale for Respondents State
Advocate Mrs.Manjusha A. Deshpande for Respondent No.3.

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CORAM : PRASANNA B. VARALE &
R.G.AVACHAT, JJ.
DATE : 29.01.2020

ORAL ORDER :-

Heard the learned advocate appearing for the petitioner.

2] The petitioner by way of present Contempt Petition prayed for initiation of action against respondent no.3 for non compliance of the order of this Court dated 21/11/2018 in Writ Petition No.12658/2016. By order dated 24/7/2019, simple notice was issued to respondent no.3, returnable on 21/8/2019. As there was no positive response, by our detailed order on 20/11/2019 we directed the Divisional Commissioner, Aurangabad to initiate proper steps. In response to our directions a detail affidavit in reply is filed by Shri S.M.Kendrekar, Divisional Commissioner, Aurangabad Division, Aurangabad. Prior to this affidavit, two earlier affidavits were filed in this Court on 28/8/2019 and 2/12/2019. It may not be necessary for us to refer to these affidavits in reply in detail. Suffice it to say that these affidavits in reply mention the earlier steps taken by the Divisional Commissioner and the exchange of communications between the Divisional Commissioner, Aurangabad and Chief Officer, Municipal Council, Tuljapur, Dist.Osmanabad as well the District Collector, Osmanabad and communication between the Chief Officer, Municipal Council, Tuljapur and Assistant Director, Local Fund Audit, Osmanabad is annexed to the affidavits in reply. The affidavit in replies filed by Shri S.M.Kendrekar, Divisional Commissioner dated 28/01/2020 refers to the steps initiated by the Divisional Commissioner so as to recover an amount of Rs.1,14,20,908/-. The details are provided in paragraph no.3 of the affidavit in reply. It may not be out of place to refer a specific statement made in the affidavit in reply in paragraph no.8 and the same reads thus :

> "8] I say and submit that I have personally monitored the progress of the Recovery of the amount involved in the Special Audit Report which is subject matter of the order passed by this Hon'ble High Court in Writ Petition 12658/2016 on 21/11/2018. I further say that I personally communicated to the Collector, Osmanabad, Respondent No.4, in Contempt Petition 485/2019 several times and directed her to personally look into the matter for effective recovery of the amount involved. This deponent has made every possible effort and left no stone unturned to comply the orders passed by this Hon'ble High Court on 21/11/2018 in Writ Petition No.12658/2016."

3] Then there is a reference to a personal communication forwarded through Divisional Commissioner, Aurangabad to Collector, Osmanabad. By communication dated 17/1/2020, the Collector, Osmanabad requested the Collector, Solapur to seek recovery of an amount to the tune of Rs.62,20,908/- as arrears of land revenue. We see no reason not to accept the statement of the Divisional Commissioner that he is monitoring the progress of recovery of the amount. The learned counsel for petitioner vehemently submitted before this Court that there is only part compliance of the order of this Court and it was submission of learned counsel for the petitioner further that a communication was forwarded to submit that the record is available with the Municipal Council, Osmanabad and the office or the Officer can peruse the same. The learned counsel for petitioner invited our attention in support of his submission to paragraph no.4 of the order dated 21/11/2018.

4] Then it was submission of the learned counsel for petitioner that this is the statement made before this Court referred to in paragraph no.4 of the order dated 21/11/2018 runs contrary to the affidavit in reply filed by the Divisional Commissioner dated 20/1/2020. In support of his submissions, the learned counsel for petitioner referred to paragraph no.7 of the affidavit in reply by picking up the words that Audit Paras 34-38, 40, 43 and 45-54 relating to want of record, and then the words further appearing in Paragraph no.7 as regards missing records, the Accountant of Tuljapur Municipal Council has filed a complaint with Tuljapur Police Station on 01/01/2020 and the matter has been assigned to Police Officer for further inquiry.

5] It is the submission of the learned counsel for petitioner that as it was observed in Paragraph no.4 of the order dated 21/11/2018 in regards to Point Nos.36 to 51 there was a specific statement that record was available, it may be necessary to direct the Divisional Commissioner to submit his further report to this Court on this aspect and till that period the Petition be kept pending in this Court. Though it is settled procedure that the scope of Contempt Petition is limited one and in a Contempt Petition this Court is not undertaking the exercise of reappreciation of the material which form part of the Petition but for the insistence of the learned counsel for petitioner we permit the learned counsel for petitioner to refer to the provisions of Bombay Local Fund Audit Act, 1930. Not only this when the Division Bench of this Court in clear and unambitious words was pleased to observe in paragraph no.5 of the order of this Court dated 20/11/2018 that now the Commissioner to take further steps as per Sections 11 and 12 of the Bombay Local Fund Audit Act, 1930, we permit the exercise undertaken by the learned counsel for petitioner by reading not only the provisions of Sections 10 and 11 of the Act but also Section 10 of the Act only for the satisfaction of the learned counsel for petitioner even though it took sufficient time of this Court and resulted in delay of hearing the other matters posted before this Court.

6] Now on this backdrop we may refer to the affidavit in reply filed by the Divisional Commissioner Mr.Kendrekar once again. It would be useful to refer to communication dated 2/1/2020 addressed to the Divisional Commissioner, Aurangabad. Now, it refers to this particular submission of the counsel that a statement was made before this Court about the availability of record and there is a contrary stand of non-availability of the record. The Chief Officer of the Municipal Council, Tuljapur in clear words submits an explanation to the Divisional Commissioner. It refers to 538 files stated to be available for the audit inspection under Section 90. Then it states the further material factual aspect and it states that instead of informing about the availability of the certificates due to an error and a typographical mistake, it was informed that the files are available. Then it is stated that the exercise of conducting audit for the period from 15/10/2019 to 27/12/2019 was undertaken and in this exercise 230 files and 1048 certificates were examined. Then it is stated that in so far as a less number of files and certificates which were missing a report is lodged at Tuljapur Police Station on 01/01/2020 bearing Crime Register No.1/2020. Now, this is what is referred to in the affidavit in reply by the Commissioner Shri Kendrekar. Considering this factual aspect we have no reason to say that the authority like Divisional Commissioner, Aurangabad is trying to make some erroneous statement before this Court or is not discharging his duty with care and caution. It may not be out of place to state here that as a submission is made before this Court by the Commissioner that he himself is monitoring the progress in the matter and is keeping a constant vigil over the matter by issuing necessary directions to the other Officers including the Collector, Osmanabad, it can safely be stated that the Commissioner, Aurangabad would take all possible steps to see that the process initiated by him and which is being monitored by him, reaches to its logical end. In that view of the matter, we see no reason to accept submission of the learned counsel for the petitioner that the Petition be kept pending before this Court and there should be a monitoring of this Court over the monitoring of the Commissioner.

7] Considering all these facts, we are of the opinion that the purpose of approaching this Court by way of present Contempt Petition is more than served. At the cost of repetition, we state that the Divisional Commissioner made a statement before this Court that he is monitoring the progress in the matter. We accept this statement of the Commissioner as an undertaking to this Court.

8] With these observations, the Petition is disposed of.

[R.G.AVACHAT,J.] **[PRASANNA B. VARALE, J.]**

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