

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.167 OF 2016

IN

L.C.SUIT NO.2179 OF 2015

Saba Iqbal Shaikh	...	Petitioner
versus		
Municipal Corporation of Greater Bombay and Anr.	...	Respondents
And		
Mr.Sharad Ugada and Ors.	...	Contemnors

Mr.Ram Singh for the Petitioner.

Mr.Santosh Parad i/b Aruna Savla for the
Respondent (MCGM).

CORAM :- SMT.BHARATI DANGRE, J.

DATE :- MARCH 5, 2020

P.C. :-

1. The contempt petition alleges disobedience of the order passed by the City Civil Court, Mumbai in L.C.Suit No.2179 of 2015. The suit came to be disposed of by recording an undertaking on behalf of the Mumbai Municipal Corporation that the structure of the petitioner would be removed by following due process of law.

2. The petitioner alleges that there was no compliance of the order passed by the City Civil Court and, therefore, the respondent is in contempt of the order passed by the City Civil Court.

3. In response to the contempt petition, the Assistant Commissioner, H/West Ward, Mumbai has placed on record an affidavit sworn on 25th July, 2019. In the said affidavit, statement is made to the effect that the petitioner as well as other footpath occupants were given time to remove all their belongings as per Section 314 of the Mumbai Municipal Corporation Act, 1888 (for short, “the MMC Act”). Further, a statement is made to the effect that the encroachment on the footpath was removed alongwith extension of the petitioner’s structure under Section 314 of the MMC Act. An averment is made to the effect that only the extension of the structure was removed and not the entire structure.

4. There is no rejoinder affidavit to the said statement.

5. The learned counsel for the Corporation has invited my attention to an order passed by the Hon’ble Apex Court in case of the adjoining structures to whom the notices under Section 314 were issued and it is in the form of a judgment delivered by the Hon’ble Apex Court in the case of *Municipal Corporation of Greater Mumbai and Ors. Vs. Rafiqunnisa M. Khalifa (Civil Appeal Nos.1727-1732 of 2019 decided on 18th February, 2019)*. The Hon’ble Apex Court, did not find any illegality in exercise of the power by the Corporation under Section 314 of the MMC Act and

has specifically held that condition specified under Section 314 of the MMC Act needs to be satisfied before taking an action and Section 314 nowhere says that if a person is carrying on any activity in such stall/structure on the strength of health license on the street, or open channel, drain, well or tank, no action can be taken. The Court has clearly recorded that the action under Section 314 can be attacked successfully only by showing that the person had erected his stall/structure with the permission of the Commissioner granted under Section 312(1) of the MMC Act and the same was not the case with the parties.

6. The situation contemplated by the Hon'ble Apex Court persist in the present case and it is not the case of the petitioner that he has erected the structure in accordance with the permission granted under Section 312(1) of the MMC Act.

7. In such circumstances, in my considered opinion, no case is made out for exercising the contempt jurisdiction of this Court and the Contempt Petition stands dismissed.

(SMT.BHARATI DANGRE, J.)