

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CONTEMPT PETITION NO. 348 OF 2019**

Bombay Environmental Action Group and another ... Petitioners

Versus

Mr. Vijay N. Suryawanshi, the Collector and others ... Respondents

.....

Mr. Navroz Seervai, Senior Advocate instructed by Mehta & Girdharlal for the Petitioners.

Mr. P.P. Kakade, GP alongwith Mrs. A.A. Purav, AGP for the Respondent-State.

Dr. Milind Sathe, Senior Advocate alongwith Mr. Karan Bhosale, Mr. Abhay Arora and Ms. Pramila Mukharjee instructed by NDB Law for Respondent Nos.4 to 7.

Mr. Sarjerao Maske Patil, Alibaug Sub-Divisional Officer, present.

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CORAM : S.J. KATHAWALLA AND

R.I. CHAGLA, JJ.

DATED : MARCH 12, 2020.

P.C. :-

1. By the above Contempt Petition, the Petitioner seeks the following reliefs :-

"(a) that this Hon'ble Court punish Respondent Nos.1 to 3 under Section 12 of the Contempt of Court Act, 1971, read with Article 215 of the Constitution of India for having committed contempt of the Judgment and Order dated 01.11.2018 read with Order dated 12.04.2019, by willfully disobeying the direction to demolish the illegal structure of Respondent Nos.4 to 7 by 01.07.2019 (Latest) with the maximum punishment and/or fine as envisaged under sec.12 of the Contempt of Court Act, 1971 or as considered appropriate."

2. In Writ Petition No.2692 of 2000, this Court (Coram : A.S. Oka as he then was and R.I. Chagla, JJ.) had passed an Order dated 1st November, 2018, the operative

portion of which is reproduced hereunder :-

"30. Accordingly, we dispose of the petition by passing the following order :-

ORDER

(i) In view of admitted position that the fourth to seventh respondents have constructed the structures in excess of what is permitted under the order dated 4th December 1998 passed by the Collector, we grant time of three months from today to the said respondents to restore the structure to the extent permitted under the order/permission dated 4th December 1998;

(ii) On failure of the fourth to seventh respondents to comply with the above directions within the stipulated time, the Collector of District Raigad shall take action of demolition of the construction which is carried out in excess of what is permitted under the permission dated 4th December 1998. If the Collector finds that it is not possible to demolish only a part of the structure, it will be open for him to demolish the entire structure. In such event, the fourth to seventh respondents will be entitled to reconstruct the structure in terms of order/permission dated 4th December 1998;

(iii) Rule is made partly absolute on above terms;

(iv) For reporting compliance by the fourth to seventh respondents and/or by the Collector, the petition shall be listed on 20th March 2019."

3. It is the case of the Petitioner that despite the said order, the Office of the Collector has not demolished the structure. The Office of the Collector has filed an Affidavit in December 2019, paragraph 8 of which is reproduced hereunder :

"8. I say and submit that as per aforesaid technical reports and in view of the compliance of the order of this Hon'ble High Court dated 1st November, 2018, the work of demolition of the illegal/excess part of said construction has been started from 8th November, 2019. I say that Tahsildar Alibag has submitted his

report dated 2nd December, 2019. I submit that almost 60% illegal/excess construction has been demolished and demolition of remaining illegal/excess construction is in progress. Annexed hereto and marked as Exhibit-7 (Colly.) are the copy of said report dated 2nd December 2019 and the photographs showing work of demolition."

4. Today, the Learned AGP on instructions from the Mr. Sarjerao Maske Patil, Alibaug Sub-Divisional Officer, states that 20% of the balance 40% illegal/excess construction is demolished and the balance 20% is yet to be demolished. She seeks four weeks time to demolish the balance illegal/excess construction. In view thereof, time is granted to demolish the balance 20% illegal/excess construction upto 7th April, 2020. Stand over to 8th April, 2020.

5. It is clarified that after the Collector submits his report stating that demolition is carried out in compliance with the above order passed by this Court, this Court shall appoint an independent Architect to visit the premises and submit his report to the Court confirming the correctness of the stand taken by the Collector that the demolition has been carried out as directed by this Court. The fees of the Architect shall be borne by the Petitioners.

(R.I. CHAGLA, J.)

(S.J. KATHAWALLA, J.)