

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CONTEMPT PETITION NO.97/2018 IN
WRIT PETITION NO.2871/2016 (d)

Suvarna Gautam Gawai

Vs.

Ajay P.Lahane (Discharged) Jeetendra Wagh, Municipal Commissioner, Akola,

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Rahul D.Dhande, Advocate for petitioner.

Shri S.V.Sohoni, Advocate for respondent -Municipal Commissioner.

CORAM :- A.S.CHANDURKAR AND N.B.SURYAWANSHI, JJ.
DATED :- FEBRUARY 03, 2021.

The petitioner had approached this Court by filing Writ Petition No. 2871/2016 seeking to protect her possession by alleging that the structure occupied by her was likely to be demolished by the Akola Municipal Corporation. In that writ petition, on 13.05.2016 an ad-interim order was passed restraining the authorities of the Municipal Corporation from disturbing the possession of the petitioner or demolishing the structure. The said writ petition was thereafter heard and decided on 16.01.2018. This Court found that there were various disputed questions that arose for consideration. In that view, the petitioner was directed to appear before the Municipal Commissioner on 05.02.2018 and submit a representation to substantiate her contentions. The ad-interim order was directed to continue for a period of three months. This Court also observed that though the petitioner had claimed that the Municipal Corporation authorities had high-handedly demolished her property and had sought compensation, the said prayers were kept open.

The present contempt petition has been filed raising the grievance that though the petitioner appeared before the Municipal Commissioner on 05.02.2018, no cognizance of her representation was taken. On the contrary, on 09.03.2018 the property occupied by the petitioner came to be demolished despite the fact that the ad-interim order was to remain operative till 15.04.2018. In response to the notice issued in the contempt petition, an affidavit has been filed by the Municipal Commissioner taking a stand that on 05.02.2018 the petitioner did not appear before the Municipal Commissioner. Hence, on 13.03.2018 a notice was issued to the petitioner calling upon her to remain present on 26.03.2018. It is further stated that on 26.03.2018 the petitioner sought time on the ground that she was busy in the marriage ceremony of her son and hence the proceedings were kept on 03.05.2018. It is further stated that despite directions to produce the measurement sheet the same has not been produced till date. It is further denied that on 09.03.2018 the petitioner's property was demolished.

When the contempt petition was heard on 07.08.2018 the following observations were made which can be gathered from paragraphs 4 to 6 of that order. The said observations are reproduced below :

“4. The grievance about contempt is in relation to the alleged incident dated 09.03.2018. The petition has been filed before this Court on 19.03.2018. This Court has issued notice on 20.03.2018.

5. The proceedings were taken up by the respondent No.2 Municipal Commissioner his office in March 2018 and the petitioner was called upon to remain present on 26.03.2018. Notice of hearing was issued on 13.03.2018 i.e. four days after the alleged demolition.

6. The petitioner has produced photographs on record which do not throw any light on the controversy. The photographs of labours who came with JCB or any photograph or registration details of the vehicles are not there. Not only this, it appears that the statement that, petitioner had appeared before the respondent on 05.02.2018 may not be correct.”

In the light of the affidavit filed by the respondent coupled with the aforesaid observations, we find that there is no material on record which can enable this Court to form an opinion that on 09.03.2018 the petitioner's property was demolished. Similarly no grievance is shown to have been raised to the contents of the notice dated 13.03.2018 which records absence of the petitioner on 05.02.2018. We therefore find that there is no sufficient material to even prima-facie hold that there has been non-compliance of the order dated 16.01.2018. Moreover by that order the prayers made by the petitioner against the alleged demolition and grant of compensation have already been kept open.

We therefore do not find this to be a fit case to exercise contempt jurisdiction. The contempt petition is accordingly dismissed.

JUDGE

JUDGE

Andurkar..