

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CONTEMPT PETITION NO. 557 OF 2021
IN
WRIT PETITION NO. 7051 OF 2020

Gajanan s/o Ramdas Chaudhari.

... PETITIONER

VERSUS

Sandip s/o. Shivdas Chaudhari and others.

... RESPONDENTS

...
Mr. Kishor C. Sant, Advocate for Petitioner.

Mr. N. L. Choudhari, Advocate for Respondent Nos.1 & 2.

...

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 23rd February, 2021.

PRONOUNCED ON : 17th March, 2022.

ORDER :

. It is a motion for contempt moved by the petitioner by taking aid of Article 215 of the Constitution of India.

2 Heard Mr. Kishor C. Sant, learned counsel for petitioner and Mr. N. L. Choudhari, learned counsel for respondent Nos.1 and 2,

who are the main contesting parties.

3 Mr. Sant, learned counsel for petitioner submitted that the proceedings of Special Civil Suit No.31 of 2019 are pending before the learned Civil Judge, Senior Division, at Dhule. The petitioner has also prayed for injunction against respondent Nos.1 and 2 from alienating the plots and creating third-party interest in the suit properties. He submitted that the application for interim injunction vide Exhibit-5 moved by the petitioner was not heard by the Trial Court by observing that the suit can be disposed of expeditiously. However, there was Covid-19 pandemic situation after March 2020 as a result there was no regular Court functioning. There were directions to the Trial Courts not to pass adverse orders in absence of parties. Mr. Sant, learned counsel submitted that by taking undue advantage of the situation, two respondents namely Nilkanth Chaudhari and Sulochana Chaudhari executed two sale-deeds on 13th June, 2020. The petitioner moved an application to pass appropriate orders on Exhibit-5, but it was not heard in view of the guidelines issued by the High Court.

4 Mr. Sant, learned counsel further invited my attention to the order passed by this Court in Writ Petition No.7051 of 2020 dated

23rd October, 2020. He pointed out that this Court was pleased to direct the parties to maintain *status-quo* in respect of the properties in dispute. The said interim relief granted by this Court is continued from time to time. He contended that the respondent No.3 has executed sale-deed on 9th December, 2020 and the respondent No.5 has executed sale-deeds in respect of some plots from the suit properties. Mr. Sant, learned counsel submitted that respondent Nos.1 and 2 have committed breach of the order of *status-quo* passed by this Court on 23rd October, 2020. The petitioner moved contempt petition. Even then respondent No.2 issued advertisement in the daily newspaper "Divya Marathi" on 13th April, 2021 and 14th May, 2021 thereby inviting the public at large for sale of 3BHK bungalow on plot Nos.104 to 108 from Survey No.398. The petitioner through his advocate issued notice to respondent Nos.1 and 2 pointing out that there is order of *status-quo* in respect of the properties in dispute and if any construction is made or third-party interest is created, it may amount to contempt of Court order passed by this Court. The respondent No.2 had replied the notice through advocate thereby informing that plot Nos.104 to 108 from Survey No.398 are not suit properties. The respondent No.1 also replied the notice through his advocate stating that plot Nos.104 to 108 are in his possession. It is stated in the reply notice that the said properties are not subject

matter of the suit properties.

5 Mr. Sant, learned counsel submitted that while issuing notice dated 17th April, 2021, the number of civil suit was wrongly typed as Special Civil Suit No.21 of 2019. It was specifically pointed out that in Special Civil Suit No.31 of 2019 in paragraph 9 there is specific reference to Survey Nos.398 and 399. Mr. Sant, learned counsel submitted that respondents have not stopped their activities in spite of specific order passed by this Court. The respondent Nos.1 and 2 have no respect to the Court orders. The act of respondent Nos.1 and 2 clearly attracts the provision of the Contempt of Courts Act and Article 215 of the Constitution of India. He submitted that the respondent No.1 is even trying to pressurize the Sub-Registrar, Dhule as he intends to dispose of the suit properties. Mr. Sant, learned counsel urged to initiate an action of contempt against the respondent Nos.1 and 2 for committing contempt of the order passed by this Court dated 23rd October, 2020 in Writ Petition No.7051 of 2020.

6 Mr. N. L. Choudhari, learned counsel for respondent Nos.1 and 2, per contra, submitted that the contempt petition moved by the petitioner is misconceived and misplaced. The respondent Nos.1 and 2 have taken every care to obey the order passed by this

Court. Mr. Choudhari, learned counsel, however, admitted that this Court was pleased to direct the parties to maintain *status-quo* in respect of the properties in dispute by order dated 23rd October, 2020 in Writ Petition No.7051 of 2020. Mr. Choudhari, learned counsel submitted that in the proceedings of Special Civil Suit No.31 of 2019, the petitioner had disputed only 63 plots from land Survey Nos.398 and 399 situated at Dhule. This Court has restrained the respondents in respect of suit properties mentioned in Special Civil Suit No.31 of 2019 more particularly described in Schedule-A. He submitted that plot Nos.104 to 108 are not the part of suit properties. Those are not mentioned in Schedule-A annexed with the plaint or in the public notice dated 25th June, 2019. As such, plot Nos.104 to 108 cannot be termed as disputed property. The respondent Nos.1 and 2 have made development plan in respect of those properties and hence they have not committed any contempt of the order passed by this Court.

7 Mr. Choudhari, learned counsel for respondent Nos.1 and 2 submitted that there are more than 300 plots in land Survey Nos.398 and 399. The petitioner is disputing only 63 plots. Plot Nos.104 to 108 are not disputed. The respondent Nos.1 and 2 never interfered in respect of 63 plots mentioned in Schedule-A and public notice dated 25th June, 2019. On the other hand, the petitioner has

already sold out some plots out of 63 plots, but he is now restraining the respondent Nos.1 and 2 from developing the plots, which are owned and possessed by respondent Nos.1 and 2, which are not part of the suit properties. Mr. Choudhari, learned counsel for respondent Nos.1 and 2 urged to dismiss the petition for contempt at threshold.

8 I have considered the submissions made by Mr. Sant, learned counsel for petitioner and Mr. Choudhari, learned counsel for respondent Nos.1 and 2. I have also gone through the order of *status-quo* passed by this Court on 23rd October, 2020 in Writ Petition No.7051 of 2020, which has been continued from time to time. I have also gone through the copies of documents produced by the petitioner alongwith list of documents as well as affidavit-in-reply filed on behalf of respondent Nos.1 and 2 with documents.

9 There is no dispute that the proceedings of Special Civil Suit No.31 of 2019 are *sub-judice* before the Civil Judge, Senior Division, at Dhule. This Court vide order dated 23rd October, 2020 in Writ Petition No.7051 of 2020 was pleased to pass the following order:

“Heard.

2. The petitioner is impugning the order passed by

the learned Civil Judge, Senior Division, on his Application (Exhibit-32) in Special Civil Suit No.31/2019 whereby he had requested the learned Judge to take up and decide his Application of Temporary Injunction (Exhibit-5) that has been pending. Learned Judge rejected the Application on flimsy grounds even while the petitioner specifically was alleging that the respondents were disposing of the plots in dispute.

3. Leave is granted to produce documents.

4. Issue notice to the respondents, returnable within 6 weeks. Till the next date the parties to maintain *status quo* in respect of the properties in dispute. In addition to the regular mode of service, the petitioner shall serve the respondents privately by Registered Post AD and shall file affidavit of service along with acknowledgment.”

10 The order of *status-quo* passed by this Court dated 23rd October, 2020 has been continued from time to time. The order of *status-quo* is in respect of the properties in dispute in connection with Special Civil Suit No.31 of 2019. The suit properties are mentioned in Schedule-A annexed with the plaint filed in Special Civil Suit No.31 of 2019.

11 The order of *status-quo* passed by this Court is applicable to the suit properties (property in dispute). The petitioner has

produced copy of plaint vide Special Civil Suit No.31 of 2019 filed in the Court of Civil Judge, Senior Division, at Dhule with Schedule-A describing suit properties. The petitioner has filed the abovesaid special civil suit against respondent Nos.1 to 8 and the same is *sub-judice* before the Civil Judge, Senior Division, at Dhule.

12 On careful study of the suit properties, which are more particularly described in Schedule-A annexed with the plaint, description of plots (63 in number) and two landed properties find place. It is the contention of the petitioner that respondent Nos.1 and 2 have executed development agreement in respect of plot Nos.104 to 108. In this background, I have carefully examined the suit properties, which are more particularly described in Schedule-A annexed with the plaint. It is pertinent to note that plot Nos.104 to 108 from Survey No.398 do not find place in the suit properties. If plot Nos.104 to 108 from Survey No.398 are not the subject matter of the suit and not covered by the suit properties, certainly the order of *status-quo* passed by this Court is not applicable in respect of plot Nos.104 to 108 from Survey No.398. It is difficult to accept the contention of the petitioner that respondent Nos.1 and 2 have committed breach of the order of *status-quo* passed by this Court by executing development agreement in respect of plot Nos.104 to 108

from Survey No.398. When the order of *status-quo* is not applicable to plot Nos.104 to 108 from Survey No.398, respondent Nos.1 and 2 cannot be said to have committed breach of the order of *status-quo* passed by this Court. Plot Nos.104 to 108 from Survey No.398 are not governed by the order of *status-quo*. In this premise, the contempt petition moved by the petitioner against respondent Nos.1 and 2 alleging that respondent Nos.1 and 2 have executed development agreement in respect of plot Nos.104 to 108 from Survey No.398, cannot be entertained.

13 Having regard to the above reasons and discussion, the petitioner has failed to make out *prima-facie* case to initiate contempt against respondent Nos.1 and 2 for committing contempt of the order of *status-quo* passed by this Court on 23rd October, 2020, which has been continued from time to time. Hence, the following order is passed:

ORDER

- I. The contempt petition stands dismissed.
- II. No order as to costs.

[SHRIKANT D. KULKARNI, J.]