

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**Contempt Petition [CP] No.124 of 2021**

**in**

**Writ Petition No.1143 of 2021 (D)**

*Pushpa Dadarao Pundekar*

vs.

*Sanjay Laxmanrao Gawande & others*

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Office Notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.  
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Court's or Judge's Orders

*Mrs. R.S. Sirpurkar, Advocate for the Petitioner.*

*Mr. R.L. Khapre, Senior Advocate assisted by Mr. D.R. Khapre,  
Advocate for the Respondents.*

**CORAM : MANISH PITALE, J.**

**DATE : 15<sup>th</sup> MARCH, 2022.**

This contempt petition is filed alleging that the respondents/alleged contemnors have violated directions contained in the order of this Court dated 01/03/2021.

02] The facts leading up to the file of the present contempt petition are that the petitioner filed a suit for declaration and injunction against the respondents in respect of the suit property, contending that certain obstructions created by the respondents for access to the property of the petitioner were required to be removed. In the said suit, the petitioner filed an application for temporary injunction. The same was allowed by the Court of Civil Judge Senior Division, Akot (trial court). The operative portion of the order dated 22/12/2020 allowing the application for temporary injunction reads thus:-

**“O R D E R**

1. *The application (Exh.5) is hereby allowed with costs.*
2. *The temporary mandatory injunction is hereby granted in favour of plaintiff and against the defendants.*
3. *The defendant Nos.1 to 3 are hereby directed to remove the construction of wall on 15 meter D.P. road which is opposite the Mangal Karyalaya of the plaintiff as shown in the map annexed with plaint in red colour by letters ‘E’ and ‘F’. So also directed to remove the fencing of barbed wire erected on the said 15 meter D.P. road as shown in the plaint map by letters ‘G’ and ‘H’, within 15 days from the date of order.*
4. *If defendant Nos.1 to 3 failed to remove the construction of compound wall and fencing within given period then defendant No.6 i.e. Municipal Council, Akot to remove the alleged compound wall and fencing within 7 days and submit the report accordingly.*
5. *If the work of demolition as directed is done by defendant No.6, then the cost of said demolition work be recovered from defendant Nos.1 to 3.*
6. *The defendant Nos.1 to 3 are hereby temporarily restrained from causing obstruction in any manner on 15 meter D.P. road till decision of suit.”*

03] It is an undisputed position that the appeal filed by the respondents against the said order stood dismissed and that the order of temporary injunction stood confirmed. Aggrieved by the same, the respondents filed Writ Petition No.1143/2021, which was disposed of as follows :

**“ORDER**

- (i) Without touching to the merits or demerits of the orders passed by both the Courts below, this writ petition is disposed of.*
- (ii) The petitioners are directed to remove the obstruction and shall give 9 meters road to the respondent No.1-original plaintiff through Points G-H and E-F so as to give access to respondent No.1.*
- (iii) Clause (2) of the order passed by learned Civil Judge Senior Division, Akot is substituted by this order.*
- (iv) Learned Civil Judge Senior Division, Akot is directed to decide Special Civil Suit No.57/2020 within a period of 1½ years from today.*
- (v) The petitioners are directed to abide by the undertaking given to this Court and shall remove the portion as indicated in this order, within three days from today.*
- (vi) Rule accordingly. No order as to costs.”*

04] Mrs. Sirpurkar, learned Counsel for the petitioner invited attention of this Court to the plaint map and contended that considering the order passed by the trial Court allowing the application for temporary injunction along with the order passed by this Court disposing of the aforesaid writ petition, the action undertaken by the respondents would show that it violated the mandate and the spirit of the order passed by this Court. It is contended that while the respondents have ensured access of 9 meters to the property of the petitioner by partly removing fencing and wall in the relevant portion of the property, the respondents have erected fencing beyond 9 meters access, which was not contemplated as per the order of this Court.

According to the learned Counsel for the petitioner, the said act amounts to altering the suit property to the detriment of the petitioner and it is against the spirit of the order of this Court, read with the order passed by the trial Court, particularly Clause 6 thereof. According to the learned Counsel for the petitioner, as per Clause 6 of the order of the trial Court, while allowing the application for temporary injunction, which was not disturbed by the order of this Court, the respondents were expected not to create any obstruction in any manner on the entire 15 meters width of the access road in question. By creating obstruction and erecting the aforesaid fencing, the respondents have committed contempt of the order of this Court.

05] On the other hand, learned Senior Counsel Mr. R.L. Khapre for the respondents submitted that if contents of paragraph 8 of the order passed by this Court are read with the operative portion of the order, it becomes clear that the respondents were specifically directed to remove obstructions and give 9 meters road to the petitioner for access to her property. The respondents had abided by the said directions and insistence on direction at Clause 6 of the order of the trial Court was misplaced, for the reason that a proper reading of the order passed by this Court demonstrates that the insistence on keeping entire 15 meters road available, was not justified. It was submitted that the apprehension regarding the nature of suit property being altered is misplaced, because the suit is still pending before the trial Court.

06] Having heard the learned Counsel for the rival parties. It needs to be examined, whether the order dated 01/03/2021 passed by this Court in Writ Petition No.1143/2021, has been violated in any manner by the respondents herein. Perusal of the said order would show that the learned Senior Counsel appearing on behalf of the respondents, on instructions, had made a statement that the respondents would remove obstructions of fencing and wall so that 9 meters wide road becomes available to the petitioner to access her property. The operative portion of the order at Clause (ii) specifically directs the respondents to remove obstructions and to give 9 meters road to the petitioner for access to her property. Clause 3 of the order of the trial Court directing removal of entire wall on the 15 meters road, therefore, stood substituted by the order of this Court. A proper reading of the order of this Court along with the order of the trial Court would show that while Clause 3 stood substituted, thereby giving specific direction to the respondents to keep 9 meters road available to the petitioner, by implication Clause 6 of the order of the trial Court also obviously stood modified to that extent.

07] It is an undisputed fact that the respondents have indeed removed fencing and wall to the extent of 9 meters each, to ensure that 9 meters wide road for access is available to the petitioner.

08] Serious objection is raised on behalf of the petitioner on the act of the respondents in erecting fence in north-south direction after keeping 9 meters wide road

available for access. According to the petitioner, this amounts to altering the suit property itself, which would be prejudicial to the interest of the petitioner, particularly when the respondents have also filed counter claim in the pending suit before the trial Court. This Court is of the opinion that the apprehension expressed on behalf of the petitioner is misplaced, because the suit and the counter claim are still pending and even if the aforesaid fencing has been erected by the respondents after keeping 9 meters wide road available for access, that in itself cannot enure to the benefit of the respondents. This is because the entire dispute on merits is still at large before the trial Court.

09] This Court is of the opinion that the respondents have shown substantial compliance with the order of this Court and no case is made out to proceed against them by invoking contempt jurisdiction. The apprehension expressed on behalf of the petitioner is addressed by observing that erecting of the fence by the respondents after keeping 9 meters wide road for access to the petitioner in terms of the order of this Court, shall not in any manner amount to altering the nature of the suit property and it shall not enure to the benefit of the respondents, when the suit as well as the counter claim are taken up for consideration on merits by the trial Court.

10] The contempt petition is dismissed with the aforesaid observations.

Signed by: SANDESH DAULATRAO  
WAGHMARE  
Private Secretary to the Hon'ble Judge  
Signing Date: 16.03.2022 18:32

**JUDGE**