

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

(SUO MOTU) CONTEMPT PETITION NO. 390 OF 1993

Krishna M. Mirchandani .. Petitioner
Versus
M/s. Monica Constructions Co & Ors .. Respondents

WITH
CIVIL APPLICATION NO. 30 OF 2017

Ulhasnagar Municipal Corporation .. Applicant

Krishan M. Mirchandani .. Petitioner
Versus
M/s. Monica Constructions Co & Ors .. Respondents

WITH
CONTEMPT PETITION NO. 211 OF 1993
WITH
COURT RECEIVER'S REPORT NO. 2 OF 2023

Krishan M. Mirchandani .. Petitioner
Versus
Rajesh C. Rupchandani & Ors. .. Respondents

-
- Mr. Ajit Jakhadi a/w Mr. Amol Anant Chile i/by Mr. Mayur S. Kadam and Mr. Amit Kukreja for Petitioner
 - Mr. Abhijeet Joshi i/by Ms. Pooja Joshi for Applicant in CAN 30/17 (Ulhasnagar Municipal Corporation)
 - Mr. Ritvik Joshi i/by Mr. Sujay H. Gangal for Respondent No. 1
 - Mr. Sagar A. Joshi for Respondent No. 5
 - Mr. Amol Gatne, *Amicus Curiae*
 - Ms. Rekha V. Rane, 2nd Assistant to Court Receiver
-

CORAM : MILIND N. JADHAV, J.
DATE : JANUARY 16, 2023

P.C.:

1. Today the parties are before me. The Court Receiver has also filed Report No. 2 of 2023 which is served upon all the parties.

2. Heard learned Advocates appearing for the parties and Mr. Gatne, learned *Amicus Curie*. The Contempt Petitions were partly heard by this Court on 5th January, 2023.

3. Rule in Contempt Petition came to be issued by this Court by order dated 29.10.1993 on account of the breach of the status-quo order dated 18.06.1993 passed by the learned District Court, Thane and creation of third party rights by the Respondent No. 1 - Mr. Rupchandani. Prior thereto, by order dated 15.10.1993, the learned Court Receiver, High Court, Bombay came to be appointed with a direction to take the Physical possession of the disputed property i.e "Kamal Mohit Apartment" CHSL, Ulhasnagar-5. In compliance thereto, the property in question is under the lock and key of the larned Court Receiver.

4. Respondents Nos. 1 to 17 in (Suo-motu) Contempt Petition No. 390/1993 are the third party flat purchasers who were found to be in possession of some of the flats in breach of orders of *status quo* granted by the learned District Court.

5. Both Contempt Petitions were dismissed by the order dated 18.11.2011, however only Contempt Petition No. 390 of 1993 was

restored by order dated 21.02.2012. Further during the pendency of the Contempt Petitions as recorded by the order dated 24.08.2015, original Petitioner Mrs. Mirchandani is reportedly expired. Further going by the Records, it seems no steps have been taken by the legal heirs of the Petitioner to bring themselves on record for further prosecution of the Contempt Proceedings. So far as the Contempt Petition No. 390 of 1993 is concerned, during its pendency, even some of the Respondents have expired viz. Respondent Nos. 6 and 11. It stands dismissed as against the Contemnor Nos. 2 to 4, 9, 12 to 15.

6. In the aforesaid background, the Ulhasnagar Municipal Corporation has filed Civil Application No.30 of 2017 in Contempt Petition pointing out that property in question is in dilapidated state requiring demolition so as to avoid any untoward incident to the public at large and therefore prayed for grant of permission to demolish the dilapidated structure.

7. The learned Court Receiver has filed Court Receiver's Report No. 2/20023 as directed by order dated 05.01.2023. Further as recorded by the order dated 05.01.2023, all parties are *ad idem* that disputed structure is dilapidated and have given their consent to the Corporation for demolition of the same.

8. Considering the facts of the case in its totality, as the main Contempt Petition No. 211/1993 stands disposed off by order

dt:18/11/2011, no purpose would be served in further prosecuting the other Contempt Petition No. 390/1993 against the third party flat purchasers alone. This is more so in the light of the fact that disputed structure stands vacated and is required to be demolished by the Municipal Corporation being in a dilapidated state. Rule issued in the Contempt Petition has achieved its purpose, if Municipal Corporation is permitted to take steps for demolition of the structure after following the due of process of law. More so since there is no challenge to the demolition notice issued by the Corporation either by Respondent Nos. 7 and 8 who claim to be the owners of plot on which the disputed structure stands or Respondent No. 1- Developer, the main contemnor or by the flat purchasers present before this Court.

9. Therefore, in the facts and circumstances, Contempt Petition and the Civil Application can be disposed off by passing the following directions:

- (i) Respondent Nos. 7 and 8 shall deposit the amount of Rs. 89,115/- as specified in the Court Receiver's Report with Court Receiver, High Court, Mumbai within four weeks from today;
- (ii) The Court Receiver, High Court, Mumbai stands discharged from Contempt Petition No. 211/1993 without passing accounts. Court Receiver's Report

No. 2 of 2023 stands allowed in view of directions given in this order;

- (iii) The Court Receiver to hand over the physical possession of the suit property i.e "Kamal Mohit Apartment" CHSL, Ulhasnagar-5 to the Ulhasnagar Municipal Corporation;
- (iv) Ulhasnagar Municipal Corporation may take steps for demolition of the structure as prayed by it in CA No. 30/2017 after following the due process of law and on completion of the exercise, handover the possession of plot to Respondent Nos. 7 & 8 on behalf of all legal heirs of the owner of the plot as per the record maintained by Corporation. Respondent Nos. 7 and 8 are liable to pay all demolition charges of the Corporation before getting possession of the plot from the Corporation.

10. In view of the above directions, the Contempt Petitions, Civil Application as well as Court Receiver's Report stands disposed.

[MILIND N. JADHAV, J.]