



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 314 OF 2023
IN
WRIT PETITION NO. 1176 OF 2020

Shri. Bhaskar Walku Meher)
Age : 71 Years, Occu.: Retired)
Residing at Deep Darshan,)
Post Eranjad, Taluka Ambernath)
Dist. Thane) ...Petitioner

Versus

1. State of Maharashtra)
2. Jagatsingh Rajesingh Girase)
The then Competent Authority)
Being Sub Divisional Officer ,)
Ulhasnagar, Tal. Ambernath,)
Dist. Thane) ...Respondents

Mr. Prathamesh Bhargude a/w. Mr. Sharad Dhore and Mr. Sumit Sonare, for Petitioner.

Mr. A.I. Patel, Addl. GP and Ms. M.S. Bane, AGP, for Respondent/State.

Mr. G.S. Godbole, Senior Counsel a/w. Ms. Ashwini B. Jadhav i/b. Mr. Abhijit, Patil, for Respondent No.2.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

**RESERVED ON : SEPTEMBER 25, 2023
PRONOUNCED ON : OCTOBER 6, 2023**

JUDGMENT (Per M.M. SATHAYE, J.) :

1. This Contempt Petition is filed complaining breach of Order dated 17/09/2020 in Writ Petition No. 1176 of 2020 (hereinafter “the said Order’ and “the said Petition” for short). The Petitioner *inter alia* prays to declare and hold that Respondent No. 2 (Mr. Jagatsingh Rajesingh Girase, the then Competent Authority under National Highways Act, 1956 / S.D.O. Ulhasnagar, Taluka Ambernath, District Thane) has willfully disobeyed the said Order. The Petitioner further prays for punishing the said Respondent No. 2 under the Contempt of Courts Act, 1971 r/w. Article 215 of the Constitution of India. The said Respondent No. 2 (alleged Contemnor) has appeared in this matter even before pre-admission notice was issued by this Court.

2. Heard Mr. Bhargude, the learned counsel appearing for the Petitioner and Mr. Godbole, the learned senior counsel for Respondent No.2/Contemnor. Also heard Mr. Patel, Learned AGP for Respondent/State. Perused the record.

3. In the above Contempt Petition, Respondent No. 2 (Jagatsingh Rajesingh Girase) has filed an affidavit in reply affirmed on 25/07/2023. The Collector of Thane has also filed an affidavit dated 08/09/2023 on behalf of the State.

4. Mr. Bhargude submitted that the present Respondent No. 2, who was Respondent No. 1 in the above Writ Petition, was directed under the Order dated 17/09/2020 to consider the application of the Petitioner for referring the dispute of title and apportionment to the Civil Court in respect of compensation receivable for acquisition under the National Highways Act, 1956. He further submitted that when the said Order was passed, the learned AGP appearing for the present Respondent No. 2 stated that he will not distribute the compensation to anybody until the competent court decides the issue of title and apportionment of the amounts or any part thereof. This statement has turned out to be a false statement because it has now transpired that the amounts were already disbursed in favour of the opposite party in the said Petition, by the present Respondent No. 2. Also the direction to decide the Petitioner's application dated 30/08/2019 was disobeyed. Mr. Bhargude further submitted that not only Respondent No. 2 committed contempt as narrated above, he himself as a plaintiff, had

filed a civil Suit being Special Civil Suit No. 154 of 2020 seeking a declaration that the disbursal made by him to the other co-owners is legal and valid. Mr Bhargude however, fairly conceded that the plaint in this suit has been rejected by Civil Judge, Senior Division Kalyan under Order dated 02/01/2023. He submitted that this act of Respondent No. 2 to file a civil suit himself seeking to justify his own orders is brazen and must be taken serious note of by this Court.

5. Mr. Godbole, the learned senior counsel appearing for Respondent No. 2/Contemnor submitted that Respondent No. 2 has not willfully breached the said Order dated 17/09/2020 or any of the directions contained therein. He urged that it is a case of lack of proper communication, because on 11.05.2020 itself Respondent No. 2 had signed an affidavit in reply and had sent it to the Office of the Government Pleader for filing in the said Petition. He submitted that the rejection of the Petitioner's objection on 22/11/2019 as well as the disbursal of the amount to the co-owners was already disclosed in the said affidavit. He submitted that apparently, the said affidavit in reply was either missed or was not brought to the notice of the concerned AGP and therefore, a factually incorrect statement was made before the Court on 17/09/2020. He submitted that though the factually incorrect

statement was made by the concerned AGP, there is no element of suppression or falsity involved. He submitted that at the relevant time i.e. on 11/05/2020, the Covid Pandemic was going on and legal procedures were disrupted, and therefore Respondent No. 2 had signed on the affidavit in reply and had sent it across. The copy of the said affidavit in reply dated 11/05/2020 is annexed to the reply filed in this Contempt Petition. He submitted that since the Petitioner's objections were already rejected and the amount of compensation was already disbursed, way back in November 2019 itself, there was no question of considering the Petitioner's application and passing necessary orders, as directed in paragraph 4 of the said Order. Further he urged that, in any case, Respondent No. 2 has tendered an unconditional written apology in the present Affidavit in Reply as he has the highest regards for the Orders passed by this Court. He further submitted that during the pendency of this Contempt Petition, the present incumbent in the post of Competent Authority, has already referred the dispute between the Petitioner and co-owners to the Civil Court and Order dated 28/08/2023 is already passed by this Court in Writ Petition No. 4518 of 2023. He submitted that under this Order, a sufficient amount to secure the Petitioner's claim has been directed to be deposited in the Civil Court. So far as the filing of the suit by Respondent No. 2 is concerned,

Mr. Godbole repeatedly clarified that he is not justifying this action of Respondent No. 2 but pointing out that Respondent No. 2 had acted on legal advice he received from the concerned Govt. Pleader at Kalyan, which is clearly stated in his present Affidavit in Reply. The learned Senior Counsel was thus at pains to point out the factual position leading to present Contempt Petition. He submitted that in the aforesaid facts and circumstances, a sympathetic and a lenient view be taken by the Court considering the fact that Respondent No. 2 is a Government Officer who was doing his duty and had acted on legal advice.

6. In rejoinder, Mr. Bhargude argued that the Petitioner was never given any notice about the so called rejection of his objections on 22/11/2019 and further submitted that if the notice was given, the Petitioner could have challenged the rejection of his objection independently.

7. We have carefully considered the submissions and perused the affidavit in Reply filed by Respondent No. 2 in the present contempt petition. Respondent No. 2 has tendered an unconditional apology for failing to file an application to seek clarification of the said Order. It is stated by Respondent No. 2 that he was under a *bone fide* impression having sought legal advice from the concerned Government Advocate at

Kalyan that the correct mode of implementing the said Order was to file proceedings in Civil Court. It is further stated that he had issued the letter on 22/11/2019 disposing of / rejecting the objection raised by the Petitioner and thereafter, the compensation amount was disbursed to the co-owners as per their shares on 25/11/2019 and thereafter he was directed to file an affidavit in reply on 12/02/2020 in the said Petition. It is further stated that an affidavit in reply duly signed on 11/05/2020 by Respondent No. 2 was sent to the Office of Government Pleader for filing in the said Writ Petition. It is further stated that though Respondent No. 2 had forwarded his affidavit in reply, the same was not brought to the notice of the concerned AGP representing Respondent No. 2 and as a result thereof, the concerned AGP failed to communicate the correct factual position to the Court. It is stated that on account of lack of communication and omission to notice the affidavit in reply already sent by Respondent No. 2, the concerned AGP failed to point out to the Court that the Petitioner's objection was already decided and rejected by letter dated 22/11/2019. It is further stated that immediately on receipt of the said Order, Respondent No. 2 brought this fact to the notice of the concerned AGP that inadvertently a wrong submission had been made about the disbursement of compensation. However, the concerned AGP suggested that nothing can be done now as the Order

has already been passed. Thereafter Respondent No. 2 took legal advice from the Government Advocate in charge of Civil Court, Senior Division, Kalyan and filed the suit. It is stated that the said suit has been rejected. It is stated that in the plaint of the suit also there is a reference to the affidavit in reply filed by Respondent No. 2 in the said Writ Petition.

8. It is not disputed factually, that way back in November 2019 itself Respondent No. 2 had disbursed compensation in favour of co-owners. It also appears from the record that the affidavit in reply signed by Respondent No. 2 on 11/05/2020 discloses this factual position about the rejection of the Petitioner's objection as well as disbursement of the amount. If we consider the date on which the Respondent No. 2 signed on his affidavit in Reply, it is apparent that at the relevant time, Covid Pandemic was ongoing and strict requirements of affidavits on oath and its filing were in suspension. It is also a fact that in paragraph 11 of the plaint in the suit which Respondent No. 2 filed, *albeit* on erroneous advice, it is stated that he had filed an affidavit in reply in the said Petition. The date of filing of the suit by Respondent No. 2 is 28/09/2020, which is immediately after the said Order was passed on 17/09/2020.

9. The statement made by the concerned AGP (when the said Order dated 17/09/2020 was passed) appears to be made without considering the reply signed by Respondent No. 2. Perhaps the concerned AGP did not have the benefit of getting the said reply on time. The Courts were undergoing disruption of normal working due to the Covid 19 Pandemic at the relevant time and there is a possibility that the reply sent by Respondent No. 2 had not reached the concerned AGP and due to lack of communication, an incorrect statement was made. We therefore find this to be a fit case to give benefit of such doubt to Respondent No. 2.

10. So far as the argument of the Petitioner that the rejection of his objection on 22/11/2019 was not known to him, and if any notice was given to him, he could have challenged the said rejection, we do not propose to go into this aspect. We say so because we are conscious of the fact that now the Petitioner's dispute about title and apportionment of compensation with the co-owners, has been duly referred to the Civil Court and by our separate Order dated 28.08.2023 passed in Writ Petition No. 4518 of 2023. The Petitioner's claim has been sufficiently secured under this Order.

11. One more aspect needs to be mentioned. Under the said order dated 17/09/2020, this Court had directed the concerned authority, to whom the present respondent No. 2 reports, to issue a warning that Respondent No. 2 shall do his duty with due diligence. We had directed the state on 28/08/2023 to place on affidavit whether any such warning has been issued to Respondent No.2. Learned AGP pointed out that pursuant to our said direction, the present Collector of Thane has filed an affidavit dated 08/09/2023 and informed that on 06/09/2023, a warning letter has been issued to Respondent no. 2. In this affidavit, the Collector has also tendered an unconditional apology for delay in issuing the said warning. The copy of the “Strict Warning” letter dated 06/09/2023 is also placed on record.

12. Considering the facts narrated earlier and taking an overall view of the matter, we do not find this to be a fit case to hold Respondent No. 2 guilty of any Contempt. The Contempt Petition is accordingly dismissed.

13. Before parting, however, we must note that the action of Respondent No. 2 of filing a suit himself as plaintiff and seeking a declaration from the Civil Court justifying his actions taken in discharge of his official duty, is not befitting of the post he holds. It is almost

unheard of. We agree with Mr. Bhargude that this action of Respondent No. 2 is brazen. Since rejection of plaint of the suit filed by Respondent No. 2 is not the subject matter before us in this Contempt Petition, we are refraining from saddling Respondent No. 2 with costs. However, we expect that the superiors of the Respondent No. 2 will monitor his functioning in the future and take necessary corrective action, if the occasion so arises. We leave it at that and say nothing more.

14. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]