

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO.331 OF 2023
IN
INTERIM APPLICATION NO.1734 OF 2021
AND
INTERIM APPLICATION NO.1735 OF 2021
IN
INTERIM APPLICATION NO.2024 OF 2021
IN
SUO MOTO PUBLIC INTEREST LITIGATION NO.1 OF 2020**

Ravindra L. Tiwari

... Petitioner

Vs.

The Municipal Corporation for
Greater Mumbai & Ors.

... Respondents

Mr. Kushalkumar D. Shukla for the Petitioner.

Mr. Milind More a/w Ms. K. H. Mastakar for the Respondent-
MCGM.

Mr. Annasaheb Kale, Asst. Div. Off. (Eng.) is present.

Mr. Prakash Agre, Investigating Officer is present.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 02nd NOVEMBER 2023

P.C. :

Heard Mr. Shukla, learned Counsel representing the
Petitioner and Mr. More, learned Counsel representing the
Respondent-MCGM.

2. These contempt proceedings have been instituted for alleged disobedience of the order dated 30th August, 2021 passed by a Coordinate Bench of this Court in Interim Application Nos.1734, 1735 and 2024 of 2021 filed in Suo Moto Public Interest Litigation No.1 of 2020.

3. It has been argued on behalf of the Petitioner by learned Counsel representing him that this court, by the said order dated 30th August, 2021, had directed the Municipal Commissioner of Municipal Corporation of Greater Mumbai ('MCGM') to conduct an inquiry, fixing responsibility of erring employees and to report to this Bench. It has been stated that in terms of the said directions contained in Paragraph 17 of the said order dated 30th August, 2021, the Municipal Commissioner of the MCGM has not conducted any inquiry for fixing the responsibility, which has been mentioned in the order dated 30th August, 2021 itself and as such the Municipal Commissioner is liable to be proceeded for contempt of court.

4. It has further been argued by the learned Counsel for the Petitioner that the Petitioner had been posted in C-Ward of the Corporation from July, 2017 to February, 2018 in his capacity as Sub-Engineer, i.e., junior most officer and, hence, he cannot be held responsible for anything done after February, 2018. It is the contention of the Petitioner that since in terms of the order dated 30th August, 2021 no inquiry has been conducted by the MCGM, he is being subjected to an illegal disciplinary inquiry in respect of the alleged irregularities committed in relation to Plot No.57/59, Gulistan Apartment at Ismail Curtey Road, Pydhonie, Mumbai 400 003.

5. In some and substance, it has been contended by the learned Counsel for the Petitioner that on one hand the Municipal Commissioner has not conducted any inquiry as mandated by this Court vide its order dated 30th August, 2021 and on the other hand the Petitioner has been subjected to unlawful disciplinary proceedings and, hence, it will be appropriate for this Court to ensure that the order dated 30th August, 2021 is complied with. He prayed that the contempt

proceedings be initiated against the Respondents.

6. It is not in dispute that the Petitioner is a serving employee of the MCGM, who holds the post of Sub-Engineer. This Court, by taking suo moto cognizance of the issues relating to illegal structures/constructions, got Suo Moto Public Interest Litigation No.1 of 2020 registered. In the said Public Interest Litigation Petition, some Interim Applications were moved by some Applicants seeking their impleadment as party Respondents and also seeking a direction to be issued to the MCGM to consider the proposal submitted by them in respect of the Gulistan Building as a transit building for the purposes of development of the plot bearing Cadastral Survey Nos.2575, 2576 and 2577. The Court, while considering the said prayer for their impleadment, passed an order on 30th August, 2021 whereby the prayer of the Applicants for issuing a direction to the MCGM to consider the proposal for regularisation was not acceded to. This Court further proceeded to hold in the said order that the structure in question was completely illegal and unauthorised and also made certain observations in light of

various judgements of the Hon'ble Supreme Court regarding zero tolerance policy in the matters relating to unauthorised and illegal constructions. It was also observed by this Court that the subject building is not the one which suffers from deviations from the building plan/permission granted by the MCGM which could fall for consideration of the MCGM for regularisation; rather it was a case where the building was constructed in an absolutely illegal and unauthorised manner.

7. Keeping the aforesaid view in mind, this Court, in Paragraph 17 of the order dated 30th August, 2021, observed that the subject building could not have been constructed without the connivance of municipal officers/employees and accordingly directed the Municipal Commissioner, MCGM to conduct an inquiry to fix responsibility and to report to this Court.

8. Prior to passing of the order dated 30th August, 2021, the Petitioner was suspended on 19th April, 2018 and departmental proceeding was also initiated against him and two

other employees, viz., Ms. Rohini A. Deshmukh and Mr. Jeevak S. Ghegadmal.

9. It is true that the Court while noticing illegalities at the hands of the officers/officials of the MCGM, who permitted illegal and unauthorised construction to come up, had directed the Municipal Corporation to conduct the inquiry to fix the responsibility on the erring officers of MCGM, however the same, in our considered opinion, does not have any bearing on the departmental proceedings, which the Petitioner has been subjected to. It has been informed that these departmental proceedings have not yet been concluded. The submissions of the learned Counsel for the Petitioner for initiating contempt proceedings for alleged non-compliance of the order dated 30th August, 2021 appears to be fallacious for the reason that the Petitioner had already been facing the departmental proceedings prior to passing of the order dated 30th August, 2021. It appears from the submission made by the learned Counsel for the Petitioner that the case in the departmental proceedings putforth by the Petitioner is that since he had not been posted

at the place where the construction had come up after February, 2018 and the officers who were posted in his place between February, 2018 and 30th August, 2021 are responsible for the illegal and unauthorised construction of the building in question, as such departmental proceedings against him are vitiated. The said defence may be available to the Petitioner in the departmental proceedings, which he is free to take. The departmental proceedings needs to be decided on the basis of the evidence and the record, which may be available in the said proceedings. It is to be further noted that in the departmental proceedings, it is always open to the Petitioner to take all pleas, which may be open to him including the plea that since he had not been posted at the place where the construction had come up after February, 2018 and the officers, who were posted in his place between February, 2018 and 30th August, 2021 are responsible for the illegal and unauthorised construction of the building in question.

10. However, the contempt proceedings are primarily between the Court and the Contemnor, though anyone can

furnish an information to the Court evidencing non-compliance or disobedience of the order/judgment passed by the Court, but contempt proceedings cannot be used as a tool to create any evidence or build a defence in the departmental proceedings being faced by the Petitioner. The entire attempt in this contempt proceeding on the part of the Petitioner appears to be to create evidence in his defence in respect of the departmental proceedings, which he is currently faced with. The contempt jurisdiction of the court cannot be permitted to be misused like this.

11. For the aforesaid reasons, we are convinced that this Contempt Petition, at the instance of the Petitioner, ought not to be entertained and the same is hereby rejected and disposed of accordingly.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)