



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CONTEMPT PETITION NO.986 OF 2024
IN
SPECIAL LEAVE PETITION NO.8519 OF 2006
(OF SUPREME COURT OF INDIA)**

Anand Kashiram Sapkale,
Age-63 years, Occu:Retired,
Currently R/o-Survey No.561/2A,
Plot No.30, Block-2, Dhande Nagar,
Jalgaon-425002

...PETITIONER

VERSUS

The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai-32
and others.

...RESPONDENTS

...
Mr. Sumeet A. Sapkale Advocate for Petitioner.
Mr. A.V. Lavate, A.G.P. for Respondent Nos. 1 to 5.
...

**CORAM: SMT. VIBHA KANKANWADI AND
R.W. JOSHI, JJ.**

DATE : 26th NOVEMBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed submitting that cognizance be taken against respondent Nos.2, 3 and 4 i.e. the Collector,

Jalgaon, Commissioner, Jalgaon Municipal Corporation and Assistant Director, Town Planning, Jalgaon Municipal Corporation, Jalgaon, respectively, under the Contempt of Courts Act for wilful disobedience of the orders passed by the Hon'ble Supreme Court in Petition for Special Leave to Appeal No.8519 of 2006 dated 29th September 2009, 16th February 2010 and 31st January 2018 and also the order passed by this Court in Writ Petition No.7261 of 2023, dated 5th July 2023.

2. Heard learned Advocate Mr. Sapkale for the petitioner and learned AGP Mr. Lavate, for respondent – State.

3. The petitioner contends that he is a tax payer of Jalgaon Municipal Corporation, Jalgaon. He had made complaint on 21st March 2023 stating that there is illegal encroachment and excavation for construction of an unknown structure on approximately 10,000 Square Feet on both the open spaces of Survey No. 561/2A of Jalgaon Municipal Corporation. In fact a temple has come up byway of encroachment on the said plot belonging to the Corporation. The Hon'ble Supreme Court in the said Petition for Special Leave to Appeal had given directions that no such structure be erected for any temple on any open

space belonging to the Corporation or local body and therefore, the concerned officials ought to have taken action. However, when the petitioner had filed the said Writ Petition No.7261 of 2023, this Court was of the opinion that it is a disputed fact whether any entity has caused any encroachment, as no individual was arrayed as a respondent alleging that the encroachment has been made on the open space. But now there is evidence that a temple has come up and therefore, there is violation of the order passed by the Hon'ble Apex Court and though the complaint has been made, it has fallen on the deaf ears of the corporation authorities.

4. At the outset, we would like to observe that the action under the Contempt of Courts Act is a serious business. We would like to rely on the observations in ***S. Tirupathi Rao VS. M. Lingamaiah and others, 2024 SCC OnLine SC 1764***, wherein it is held that, "Therefore, it would be correct to state that the court's power when dealing with the question of contempt, in a sense, is discretionary. It cannot be gainsaid that even in cases where disobedience of the order of the court is not disputed, the court may also accept a defence, if raised, of impossibility to comply with an order and come to the conclusion that since it is

impossible to enforce its order, action to punish may not be initiated.” This Court is duty bound to see, as to whether, prima facie, there is disobedience of the orders of the Court, may be this Court or any other Court or even the Hon’ble Apex Court, then only question of issuing notices would arise. Herein this case, there was no specific order in favour of the petitioner. Certain guidelines and directions were given by the Hon’ble Apex Court in Petition for Special Leave to Appeal No.8519 of 2006 and thereafter it appears that even Government Resolution was passed on 5th May 2011 and also this Court had given certain directions in a Public Interest Litigation. But, unless the petitioner has proved that the said structure of temple is on the land belonging to the Corporation, we cannot come to the conclusion that the officials of the Corporation were duty bound to take the action as contemplated under the decision by the Hon’ble Apex Court or Government Resolution or in the said Public Interest Litigation.

5. The earlier attempt by the petitioner by filing Writ Petition No.7261 of 2023 was in vain, in a sense, that this Court has clearly opined that this Court was not intending to entertain the said Petition. It was also observed that the petitioner has a

statutory efficacious remedy of approaching the Civil Court. Upon inquiry, the learned Advocate for the petitioner submits that the petitioner has not knocked the doors of the Civil Court. In the pleadings, the petitioner has not stated as to why he has not approached the Civil Court. Of course, it was also observed in the said order dated 5th July 2023 passed in Writ Petition No.7261 of 2023 that the municipal authority is expected to perform its duty if it receives any complaint as regards encroachment on the Government land. It appears that the petitioner had filed complaint with the Corporation. It appears that the Municipal Corporation had then issued notice to those persons who had allegedly committed encroachment, on 5th December 2023 and 6th December 2023. In his complaint dated 25th January 2024 the petitioner says that those persons to whom the notices were given, have given explanation or reply to those notices. The replies given by those persons are on record and from those replies, it can be seen that they are claiming ownership over the disputed area. Under such circumstance, we do not find that there is any substance in the say of the petitioner that the municipal authorities were duty bound to remove the encroachment. When there is dispute regarding the title to the open space and unless it is resolved by a competent

Court, there was no statutory duty on the municipal authorities to take action. We are of the opinion that even prima facie, we cannot hold that there is disobedience of the orders of either the Hon'ble Apex Court or of this Court or there is any act in violation of the Government Resolution. Hence, there is no necessity to take any action under the Contempt of Courts Act.

6. The Petition stands dismissed.

[R.W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/NOV24