

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 146 OF 2011

Babu Tatoba Bandgar

...Petitioner

Versus

Sudhakar Vishnu Deshmukh & Ors

...Respondents

Mr Chetan Patil, with *Ajit M Savagave, Vishwesh Gadage*, for the
Applicant.

Mr Vinod Sangvikar, for Respondent Nos. 1 & 2.

Mr AA Alaspurkar, AGP, for Respondent-State.

CORAM: M.S. Sonak &
Kamal Khata, JJ
DATED: 21st August 2024

PC:-

1. Heard learned counsel for the parties.
2. The Petitioner has alleged contempt of our judgment and order dated 5/12/1991 in Writ Petition No. 1114 of 1983.

3. Our order dated 5/12/1991 accepts the minutes of the order placed on record by learned counsel for the parties and makes an order in terms thereof.

4. In effect, the Municipal Council of Ichalkaranji, which is now the Ichalkaranji Municipal Corporation, was directed to place the Petitioner in possession of the areas referred to in clause (4) only upon the petitioner surrendering possession of 14,714 sq ft and to the Municipal Council as referred to in paragraph 6 of the affidavit in reply of the 1st Respondent dated 14 June 1983. Our order dated 5/12/1991 reiterates only after the Petitioner puts the Municipal Council in vacant and peaceful possession of the said area of 14,714 sq ft, the Municipal Council will be obliged to put the Petitioner in possession of the land referred to in clauses (a), (b) and (c) of paragraph 4 within a week after that.

5. The Petitioner has relied upon *kabjepatti* signed by an officer of the Council and a possession receipt signed by yet another officer of the Council on pages 20 and 21 of the Contempt Petition to contend that the Petitioner had handed over vacant and peaceful possession of an area of 14,714 sq ft to the erstwhile Council.

6. The Corporation has filed affidavits in this Petition, submitting that the two receipts referred to by the Petitioner were only paper receipts since actual possession of the entire area of 14,714 sq ft was never handed over to the Council. Further, the Corporation pointed out the Petitioner had already sold chunks of

this property to some third parties. Therefore, the claim of having handed possession of such properties to the Council was incorrect. The Council, however, admitted receipt of 6089 sq ft of land from the Petitioner.

7. By way of rejoinder, learned counsel for the Petitioner submitted that two of the sale deeds referred to by the Corporation were not concerned with the Petitioner since the Vendor was not the Petitioner. He pointed out that the other two sale deeds relate to small areas that were sold by the Petitioners to some third party in 1964-65. He submitted that notwithstanding such sale, the Petitioner had continued in possession of the sold portions, and therefore, such possession was handed over to the Council.

8. This is a Contempt Petition; therefore, unless a case of wilful disobedience is made out, there is no question of punishing the alleged contemnors for contempt. The Petitioner must make out a case of wilful disobedience by applying a standard a little higher than the standard of preponderance of probabilities.

9. This Court's order was clear since mutual obligations were cast upon the Petitioner and the Council. The Petitioner was first required to place the Council "*in vacant and peaceful possession of the property admeasuring 14,714 sq ft*", and only after that was the Council needed to put the Petitioner in possession of the properties referred to in paragraph 4 of the minutes/order of which contempt is alleged.

10. The defence that two of the sale deeds of 1964-65 pertained to only small areas or that despite the Petitioner selling the properties referred to in the sale deeds to some third parties, the Petitioner continued in possession is difficult to accept. In any case, the Petitioner had no business transferring areas he had already sold to a third party to the Council. The defence that the remaining two sale deeds show some strangers as vendors is also not very convincing because it was the Petitioner's duty to place the Council in possession of the entire property of 14,714 sq ft, free from any encumbrances. The properties potentially in dispute could not have been handed over to the Council. The sale deeds in question are registered documents; therefore, they cannot be wished away by such post facto explanations.

11. The kabjepatti and the possession receipt no doubt referred to the Petitioner handing over an area of 14,714 sq ft to the Council officials. However, considering that a large portion of this property was already sold to a third party, the Council's defence about such receipts being issued by its officers to indicate symbolic possession or paper possession based upon the area that the Petitioner showed to the Council officials cannot be rejected as frivolous or dishonest.

12. Ultimately, our order had directed the Petitioner to place the Council in peaceful and vacant possession of the area of 14,714 sq ft. The affidavit filed on behalf of the Council refers to the construction and occupation of the parties who have purchased large chunks of this property by registered sale deeds. Thus, it is difficult to accept that the Petitioner first placed the Council in

possession of 14,714 sq ft of area. Unless this was done, the Petitioner could not have insisted upon the Council placing the Petition in possession of the properties referred to in clause 4 of the minutes or the order based on the minutes.

13. Learned counsel for the Corporation referred to an affidavit dated 14 June 1983, which was filed in Writ Petition No. 114 of 1983 by the engineer employed by the Council. This affidavit had also referred to the Petitioner illegally selling and/or encumbered from the original plot No. 644 and 655 the lands indicating above to some third parties and some third parties raising permanent or semi-permanent structures without the permission of the Council and using the same purposes for residential purposes. All this material, coupled with at least four registered sale deeds regarding the property the Petitioner claims to have placed the Council in possession, must be addressed. The Council/Corporation officials could not have ignored all such materials and gone by the kabjepatti or the possession receipt issued by its officials.

14. The chief officer of the Ichalkaranji Municipal Council, in his affidavit filed on 22 August 2011, after setting out all the circumstances arising out of the sale of large chunks of the property which the Petitioner was supposed to place the Council in possession of, has, at paragraph 11, stated the follows:

"11. I say that, because of the aforesaid difficulties the Respondent Municipal Council was unable to implement the T.P. Scheme-I in respect of Final Plots to be handed over to the Petitioner which fact was within the

knowledge of Petitioner also. I say that, the portion of land required to be surrendered by the Petitioner to the Respondent Municipal Council the concerned allottees of the Final Plots in which the said portion was merged, have made Complaints to the Respondent No.3 Collector, Kolhapur and the Deputy Director, Town Planning, Pune Region, Pune and the Respondent Municipal Council has submitted detailed reports to the concerned Authorities by Letters dated 6/2/1993 and 1/12/1999 respectively in which the Municipal Council has clearly stated the said facts and difficulties. I say that, the copies of said Letters / Reports was also sent to the Petitioner and the Complainant Shri Swami. Hereto annexed and marked Annexure-‘3’ are the true copies of Letters dated 6/2/1993 and 1/12/1999.

15. Significantly, the averments made in paragraph 11 of the above affidavit have not been refuted by the Petitioner. In such circumstances, we do not think this is any case of wilful or deliberate disobedience of our orders.

16. Our observations above are by no means final. It would still be open to the Petitioner to seek other and more appropriate remedies, including for execution of our order dated 05/12/1991. However, based on the material on record, we cannot conclude that this is a case where the Corporation or Council officials have deliberately or wilfully disobeyed our orders. There are more than bona fide disputes about the Petitioner complying with his part of the bargain and placing the Council in vacant and peaceful possession of the entire area of 14,714 sq ft. Unless this was done and conclusively established as done, there was no question of

insisting upon the Council or the Corporation complying with its part of the bargain and placing the Petitioner in possession of the properties referred to in clause 4 of the minutes or the order based on the minutes.

17. For all the above reasons, we discharge the contempt notice and dispose of this Contempt Petition. However, as noted earlier, the observations made in this order should be only in the context of invoking our contempt jurisdiction. Despite these observations, it will be open to the Petitioner to seek other and more appropriate remedies in the context of executing our order dated 5/12/1991.

18. Contempt Petition is disposed of with the above clarifications. There shall be no orders for costs.

(Kamal Khata, J)

(M.S. Sonak, J)