

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.207 OF 2021

Manohar Tukaram Shendkar And Ors.

...Petitioners.

Versus

Ravikant Ramdas Kapure And Ors.

...Respondents.

*Adv. S. G. Deshmukh i/b Adv. Gautam T. Kanchanpurkar for the Petitioners
Adv. R. S. Datar i/b Dushyant Pagare a/w Dhruti Datar for Respondent No. 2.
Adv. Ganesh Bhujbal i/b B. D. Shinde for Respondent No. 1.*

Coram : Sharmila U. Deshmukh, J.

Date : March 20, 2024.

P. C. :

1. Heard.
2. By this Petition, Contempt is alleged of the common order dated 14th February, 2019 passed by this Court in group of Petitions being Writ Petition Nos. 1915 of 2019, 1916 of 2019, 1917 of 2019, 1918 of 2019 and Writ Petition (ST) Nos. 4648 of 2019, 4649 of 2019, 4650 of 2019, 4651 of 2019, 5072 of 2019.
3. The above group of Petitions were permitted to be withdrawn by this Court. The submission of learned Counsel for the Petitioner was recorded that after demolition of the building, the Petitioners will

submit proposal to the planning authority for erecting temporary structure on CTS No. 386-B and 387-B, Vishnu Nagar. The undertaking of the Petitioners was recorded in paragraph Nos. 4 which reads thus :

4. Mr. Deshmukh, on instructions from the petitioners, states that the petitioners are not pressing these petitions. He seeks permission to withdraw these petitions. He submits that after respondents Nos.3 & 4 demolishes the building, the petitioners will submit proposal for erecting temporary structures on Survey No.270, Hissa No.9A, City Survey No.386-B & 387-B, Vishnu Nagar, Nana Shankarshet Road, Dombivali (West) to the Corporation. Copy thereof shall also be sent for information to respondents Nos.1 & 2. The petitioners undertake that:

(i) subject to permission of the Corporation, they will erect temporary structures of equivalent area in their respective possession on the open land at their expenses and will not claim any equity;

(ii) they will also go on paying monthly rent to respondents Nos.1 & 2; and

(iii) as and when respondents Nos.1 & 2 start reconstruction, they will remove the temporary structures at their expenses. Undertakings of the petitioners are accepted.

4. The Order further directs the Corporation to consider the proposal of the Petitioners in accordance with law and not to reject

the same only on the ground that respondents Nos. 1& 2 have objected the same.

5. The direction to the Respondent Nos. 1 and 2 is that after obtaining sanction of the building plans, Respondent Nos. 1 and 2 will give 15 days notice to the Petitioners for dismantling their temporary structures which will be required to be dismantled within two weeks there from failing which the Respondent Nos. 1 and 2 will be at liberty to demolish the structure and recover the expenses from the Petitioners.

6. Mr. Deshmukh, learned counsel for the Petitioner would submit that the Petitioners are restrained by the Respondent from complying with the undertaking given to the Court as they have fenced the property with iron girders and have also put up a public notice on the subject plot stating that legal action will be taken against any obstruction to the possession of the owners. He would further submit that the entire suit property has been dug up and it is impossible for the Petitioner to erect the temporary structures on the subject land. He would further submit that, although the order records the submissions and undertaking given to the Court, it is implied in the said order that the Respondent Nos. 1 and 2 will not obstruct the Petitioners from erecting the temporary structures on the said land.

He submits that by reason of the obstruction by the Respondent Nos. 1 and 2, the Petitioner is unable to comply with the undertaking as recorded in the order dated 14th February, 2019 for which contempt jurisdiction is required to be exercised.

7. *Per contra*, learned counsel for Respondent Nos. 1 and 2 would submit that by the order dated 14th February, 2019, this Court had recorded the submissions of the Petitioners and accepted the same as undertaking to this Court. He submits that in the said order there is no direction to the Respondent Nos. 1 and 2 as sought to be contended by Mr. Deshmukh and in the absence of any direction, there is no question of non compliance or committing contempt of the said order.

8. Considered the submissions and perused the order dated 14th February, 2019 of which contempt is alleged.

9. Perusal of the order indicates that the undertaking recorded in the order binds the Petitioners to firstly, not to construct temporary structure without obtaining necessary permission and from claiming any equity on that basis, secondly, to continue payment of rent and thirdly, when the Respondent Nos. 1 and 2 start reconstruction, the temporary structure will be removed. The direction given to the Respondent Nos. 1 and 2 is to give 15 days notice to the Petitioners

after obtaining sanction of the building plans.

10. To constitute contempt it must be shown that there is a deliberate willful non compliance of order passed by this Court. It is well settled that the contempt jurisdiction is to be exercised sparingly and only where the Court is satisfied that clear case of contempt is made out and the conduct of the contemnor is contumacious. The Petitioners have come with a case that the Respondent Nos. 1 and 2 have obstructed the Petitioners from complying with the undertaking given as the Respondent Nos. 1 and 2 have put up a public notice, fenced the property and have dug up the subject property. What can be inferred from the order is that the Petitioners had submitted that they will erect temporary structures and the Court had permitted the same subject to the undertakings given by the Petitioners. The order does not disclose any mandatory direction given to the Respondent Nos.1 and 2. The undertakings of the Petitioners binds the Petitioners to follow a certain course subsequent to the erection of the temporary structures. If the Petitioners are unable to erect temporary structures, it is for them to take necessary steps in that regard. The putting up of notice, fencing or digging up of the property cannot be said to be non compliance on part of the Respondent Nos. 1 and 2 in the absence of any direction given by this Court.

11. Having regard to the discussion above, no case for contempt is made out. Petition stands dismissed.

[Sharmila U. Deshmukh, J.]