

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 397 OF 2019
IN
WRIT PETITION NO. 7978 OF 2018

Yogesh Dhansing Bhoite

...Petitioner

Versus

The State Of Maharashtra and Ors.

...Respondents

WITH
CONTEMPT PETITION NO. 382 OF 2019
IN
WRIT PETITION NO. 7977 OF 2018

Anil Sambhaji Pharate

...Petitioner

Versus

The State Of Maharashtra and Ors.

...Respondents

Mr. Suresh M. Sabrad, for Petitioners in both Contempt Petitions.

Mr. Vijay D. Patil, for Respondent Nos.5 and 9 in both Contempt Petitions.

Ms. Nisha Mehra, AGP for Respondent Nos.1 to 4 in CP/397/2019.

Mr. V.M. Mali, AGP for Respondent Nos.1 to 4 in CP/382/2019.

Mr. Arjun Padhiyar a/w. Mr. Pratik Irpatgre for Respondent No.6 in both Contempt Petitions.

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**CORAM: NITIN JAMDAR &
M.M. SATHAYE, JJ.**

DATE : 24 APRIL 2024

P.C.:

. Heard the learned counsel for the parties.

2. Learned counsel appears on behalf of Respondent No.6 and undertakes to file Vakalatnama during the course of the day.

3. These two contempt petitions are filed in respect of breach of the order dated 28 November 2018 in Writ Petition No. 7978 of 2018 and Writ Petition No. 7977 of 2018. These writ petitions were filed for a direction to Respondent Nos. 2 and 3 therein to initiate the acquisition proceedings and to compensate the Petitioners for having illegally trespassed on their lands and having cut standing crops and trees. Respondent No. 5 Maharashtra State Road Development Corporation through its Executive Engineer has filed an affidavit in reply. The statement of the Advocate for the Respondent No.5 therein was that the Petitioners' possession will not be disturbed without taking recourse to law which was noted and the petition was disposed of. It is this direction that is stated to be breached.

4. The contempt petitions came up on board on 2 September 2021 wherein certain statements were recorded on the part of the Respondents. Then the petitions were adjourned from time to time. On 11 January 2024, the following order came to be passed:

. Heard learned counsel for the parties. The Petitioner is alleging that Respondent No.9- Executive Engineer of Maharashtra State Road Development Corporation is in contempt of the Order dated 28 November 2018 passed by the Division Bench of this Court in Writ Petition No. 7978 of 2018 and others. More particularly of

the undertaking of Respondent No.9 conveyed through the learned counsel that Petitioner's possession will not be disturbed without taking recourse to the law.

2. The fact that the possession was taken and it was without taking recourse to law is established position from the reply affidavit. The contention of the learned counsel for Respondent No. 9 is that there was implied consent of the Petitioner and in the circumstances narrated in the affidavit the possession was taken. The reading of the affidavit does not indicate that there was any emergent situation that the highway authorities had to act, even assuming such action would be justifiable. Thus, it cannot be said that there is no breach of the order of this Court at all.

3. In these circumstances, it was put to the learned counsel for the Corporation as to whether the Respondent- Corporation is willing on its own to offer a reasonable sum/ compensation for the damages Petitioners suffered by carrying out the above mentioned act without taking recourse to law.

4. Learned counsel for Respondent-Corporation seeks time to take instructions and inform the Court accordingly.

*5. Stand over to **5 February 2024** under the caption "For Directions".*

5. On 5 February 2024, there was disagreement on the course of action to be adopted between the Petitioners and Respondent No. 6 regarding compensation and notices were issued to Respondent No. 6 since the Court recorded that the actual work was carried out in

breach of the order of this Court. Subsequently, on 17 April 2024, the learned counsel for Respondent No. 6 appeared and sought time. Reply affidavit has been filed by Respondent No. 9. In this affidavit, it is stated that the work had to be carried out due to certain situations which the Deponent sought to explain. From this affidavit, we do not find that there was a grave exigency for which there was no time available to seek permission or modification of the order to carry out the work. However, since the work was already carried out, the learned counsel for the Petitioners had expressed that the Petitioners are agreeable for compensation as regards this damage. The Petitions were adjourned. Respondent No. 6 has filed an affidavit and has stated the same factual position as stated by Respondent No. 9. However, again from this affidavit, we cannot find that it was not possible for these Respondents to apply to this Court to release themselves from the undertaking given by them. Now to consider further course of action, though it is undoubtedly the position that the order of this Court has been breached, a question arises as to whether we should proceed further in contempt jurisdiction.

6. The learned counsel for the Petitioners has tendered additional affidavits in both the petitions. He has stated that compensation has been paid to the tune of Rs.8,75,000/- towards the trees and the Petitioners are satisfied with the same. Considering that the Respondent Nos.6 and 9 were executing a public work and they have placed on record certain situations which gave rise to urgency and

they have offered compensation to the Petitioners for the trees that have been cut with which the Petitioners are satisfied, we are of the opinion that still proceeding further to punish Respondent Nos. 6 and 9 under contempt jurisdiction would not be warranted.

7. In these circumstances, we drop the contempt proceedings discharging the notices issued and dispose of the contempt petitions.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)