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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 11543 OF 2024
IN
CONTEMPT PETITION NO. 298 OF 2022

Zubair Abdul Aziz Cheulkar & Anr ...Applicants
Versus
Ayubali Ibrahim Khanbande & Ors ...Respondents

Mr Raj Chaurasia, i/b KLS Legal, for the Applicant.
Mr Mandar Limaye, for the Respondent-Corporation.
Mr MP Thakur, AGP, for the Respondent-State.

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 9th August 2024

PC:-

1. Heard learned counsel for the parties.

2. This is an application seeking a recall of our order dated 11th July 2024. Learned counsel for the Applicant submitted that the Petitioner in the Contempt Petition had earlier filed Writ Petition No. 7909 of 2023 seeking to implement the Corporation's demolition order dated 14th January 2022. Still, the same was not entertained because of the pendency of the Civil Suit. He submits

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that after this Writ Petition was dismissed, the original Petitioner was not justified in instituting and pursuing Contempt Petition No. 298 of 2022. Learned counsel for the Applicant submits that this is a good ground to recall our order dated 11th July 2024.

3. The original Petitioner, Ayubali Khanbande, had, in fact, instituted Writ Petition No. 3891 of 2021 in this Court, complaining about inaction on the part of Thane Municipal Corporation (“TMC”) in taking action against the illegal constructions carried out *inter alia* by the present Applicant. This Petition was disposed of on 16th November 2021 after the TMC pointed out that a demolition notice had already been issued, and the same would be carried to its logical conclusion. In the said order, this Court also noted that some parties, including the Applicant herein, had filed for regularisation of the illegal construction. Therefore, liberty was granted to persons like the Applicants to point out this fact to the TMC if the TMC sought to take its notices to their logical conclusion.

4. The TMC ultimately made a demolition order dated 14th January 2022. Though the Applicant has filed suit challenging this notice, admittedly, no interim relief has been granted by the Civil Court. Besides, learned counsel for the Applicant and TMC submitted that the TMC has also rejected the Applicant’s plea for regularisation. Even this rejection order is sought to be challenged in the same Civil Suit. Again, there is no interim relief in the Civil Suit.

5. In the absence of any interim relief and just because the demolition order or the order refusing regularisation is challenged in the Civil Suit, the Corporation could not renege on its statement to the Court in Writ Petition No. 3891 of 2021 that it would take its demolition notices to their logical conclusion. Therefore, the Contempt Petition was filed by the Original Petitioner, and the learned counsel for the TMC made a statement that the demolition notice would be executed.

6. In the above circumstances, though, a fresh Writ Petition might not have been maintainable. Still, the Original Petitioner was entitled to point out to the Court that the TMC, despite there being no legal impediment, was not honouring its statement of taking its demolition notice to its logical conclusion.

7. Now that the Applicant's regularisation application has been rejected and there is no interim relief from the Civil Court, we see no good reason to recall our order dated 11th July 2024. Despite repeated opportunities, the Learned Counsel for the applicant could not produce any document supporting the legality of the structure. The fact that regularisation was applied means that the applicant admitted the structure was illegal. Even regularisation has been rejected. No case for recall is therefore made out. After having heard the learned counsel for the applicant exhaustively, no ground is made out to recall our order or to take some different view.

8. This Interim Application is accordingly dismissed. There shall be no orders for costs.

9. As stated in our order dated 11th July 2024, list the Writ Petition on 26th August 2024 to consider the compliance report.

(Kamal Khata, J)

(M.S. Sonak, J)