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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CONTEMPT PETITION NO.2 OF 2024

Mrs. Suneela Anand Gupte
v/s.

.... Petitioner

State of Maharashtra

.... Respondent

Mr. Niranjan Mogre for the Petitioner.

Mr. K. V. Saste, A.P.P. for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
SHYAM C. CHANDAK, JJ.**

DATE : 19th JUNE, 2024

P.C. :

1. By the aforesaid Contempt Petition, the Petitioner seeks invocation of *suo moto* contempt proceedings against Respondent Nos.2 to 4.

2. Learned Counsel for the Petitioner submitted that the Petitioner had filed a Civil Writ Petition (Stamp) No.94148 of 2020, in this Court, seeking a direction against Respondent No.2 therein i.e. Tahsildar, Pune City to take action against the Respondent No.3 therein

for removal of encroachment from Final Plot No.881/A at village Bhamburda, Pune. He submits that pursuant thereto, this Court vide order dated 3rd November 2020 passed in said Writ Petition, considered the affidavit in reply filed by the Respondent No.2-Ms.Tripti Kolte, Tahsildar, Pune City, and disposed of the Petition.

3. Learned Counsel for the Petitioner submitted that in the said affidavit in reply, the Tahsildar had in paragraphs 3 to 5 stated as under :-

“3. I say that pursuant to the representation dated 22.09.2020 made by the Petitioner, the Respondent No.2 initiated the inquiry regarding the encroachment of Respondent No.3 on the final plot bearing No.881-A (hereinafter referred as “the said plot”) through it’s authorized revenue officer and also issued direction for removal of encroachment u/s 50 and 53 of MLRC, if encroachment found. Upon inquiry being made, it was found that the Respondent No.3 had erected temporary shades on the said plot; construction material such as centering material, mixer machine belonging to the nearby site wherein the construction work was going on, one pokland machine was there on the said plot. Apart from the

aforesaid, on the east side of the said plot, 97.2 mtr. And 8 mtr. iron sheet (patra) compound was erected whereby fencing was done around the said compound along with lock and key.

4. I say that pursuant to the aforesaid inquiry, it is found that the respondent No.3, Shri Sunil Pawar, has made encroachments on the said plot. Thereafter, the Circle Officer Pune City, by its letter dated 9.11.2020 bearing Outward No.257/2020, issued notice to the Respondent No.3 for removal of encroachment from the said plot before 11th November, 2020 5 PM. A copy of the letter dated 9th November, 2020 bearing Outward No.257/2020 is annexed hereto and marked at Exhibit-1.

5. Thereafter, the Circle Officer through his letter dated 20th November, 2020 being Outward No.257 informed to the Respondent No.2 that the respondent No.3, in compliance with the circle officer letter dated 9th November, 2020 removed the encroachment from the said plot and the aforesaid fact was conveyed to the Petitioners by the respondent no.2, through letter dated 20th November 2020, bearing Outward No.732/2020. A copy letter of 20th November, 2020 bearing outward No.732/2020 is annexed hereto and marked "Exhibit-2".

4. He submits that said affidavit was a false affidavit and that, infact, no steps were taken by the Respondent No.2 for removal of the encroachment and that infact, the encroachment still subsists, in the said plot of land.

5. Mr.Saste, learned Additional Public Prosecutor vehemently opposed the Petition. He submits that the encroachment was removed, when the affidavit was filed and even today, there is no encroachment.

6. The said submission of the learned A.P.P. is refuted by the learned Counsel for the Petitioner. He submits that the encroachment was never removed in November 2020, when the affidavit was filed by the Respondent No.2 and that till date, encroachment continues on the land in question.

7. In view of the statements made by either of the parties, we deem it appropriate to appoint a Court Commissioner, for visiting the spot i.e. Plot No.881/A, Village Bhamburda, Senapati Bapat Marg, Pune either on 20th June, 2024 or 21st June, 2024 and for submitting a report before us, as to whether there is any encroachment on the said plot of

land. Accordingly, we appoint Mr. Yashpal Purohit, Advocate, District Legal Services Authority, Pune as the Court Commissioner. Mr.Yashpal Purohit to visit the spot alongwith the Petitioner or her representative and the Tahsildar, Pune City/Officer appointed by the Tahsildar. The Court Commissioner to give sufficient notice to the parties to enable the parties to remain present on the date and time fixed by him, for examination of the encroachment. The Court Commissioner thereafter to submit his report in duplicate in a sealed envelope to the Principal District Judge, Pune. The Principal District Judge, Pune to forward the sealed envelope containing the report to the Registry of this Court on or before 22nd June 2024, through a special messenger.

8. The cost of the Court Commissioner to be borne by the Petitioner.

9. Stand over to **25th June 2024.**

SHYAM C. CHANDAK, J.

REVATI MOHITE DERE, J.