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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 33 OF 2024
IN
WRIT PETITION NO. 416 OF 2022

Naseem Ahmed Sheikh ...Petitioner
Versus
The Municipal Corporation of Greater Bombay ...Respondents
and Ors.

Mr MA Khan, a/w Adv Ayesha Qureshi and Afram Hussain, for the
Petitioner.
Ms Pratibha Shelake, a/w Priyanka, for the Respondent-BMC.

CORAM M.S. Sonak &
Arif S. Doctor, JJ.
DATED: 5th August 2024

PC:-

1. Heard learned counsel for the parties.
2. Our order dated 03 March 2022 in Writ Petition No. 416 of 2022, of which contempt is alleged, reads as follows:-

“Mentioned out of turn.

2 The Petitioner has filed the Petition seeking directions to the Respondent Nos.2 and 3 to initiate action

against the illegal encroachers on foothpath of plot bearing CTS No.136, part No.1377, at Navpada Road, Bala Samant Marg, Bandra (West), Mumbai.

3 Learned Counsel for the Respondent-Corporation on instructions from Mr. Kishore Shejal, J.E. (Maintenance) H/W Ward, MCGM, who is present in Court states that notices under Section 314 of Mumbai Municipal Corporation Act 1888 to the occupiers of the unauthorized structures have been issued and speaking orders shall be passed within four weeks from today and appropriate action will be taken for demolition of the structures, if the structures are found to be unauthorized. We accept the statements.

4 In view of the aforesaid statement, learned Counsel for the Petitioner does not press the Petition.

5 The Petition to sand disposed of.”

3. Ms Pratibha Shelake, learned counsel for the BMC, submits that out of 8 unauthorised structures for which notices under Section 314 of the Mumbai Municipal Corporation Act (“**MMC Act**”) were issued, five were demolished on 01 August 2024. She submits that a vigil was kept up to 03 August 2024 to ensure that such structures were not re-erected.

4. Learned counsel for the petitioner submits that the demolition is incomplete and that the parties who had carried out these illegal constructions are once again restoring the demolished portion.

5. From the affidavit filed and photographs produced before us, we find that there is compliance regarding 5 of the unauthorised structures. Therefore, we direct that BMC must keep a vigil to see that structures are not once again erected unauthorisedly. If this is done, BMC must take immediate action and see that such repeated unauthorised constructions do not come up and are demolished. If necessary, this must be done by obtaining police protection. The concerned police station must render police assistance.

6. In so far as the remaining three structures are concerned, Ms Shelake refers to some previous litigation in the City Civil Court. She states that in the past, some notice issued by the BMC was interfered with by the City Civil Court. On 03 March 2022, we recorded the statement of learned counsel for the BMC based on instructions from Mr Kishore Shejal, J.E. (Maintenance), H/W Ward, who was present in the Court. He stated that notices are issued under Section 314 of the MMC Act to 8 structures or their occupiers. Ms Shelake admits that the occupiers have not questioned these notices before the City Civil Court, and accordingly, there is no legal impediment to the execution of the same. Accordingly, we fail to understand why such notices have not yet been executed *qua* the remaining three structures.

7. Accordingly, we reiterate that the BMC must, consistent with its statement, proceed to execute its Section 314 notices against the remaining three structures. This exercise must be completed within 30 days from today and, if necessary, by taking police protection. The concerned police officials must grant police protection if requested by the BMC officials.

8. This Contempt Petition is disposed of, but the BMC must file a compliance report by 9 September 2024.
9. Stand over to 18 September 2024 to consider the compliance report.
10. All concerned must act on an authenticated copy of this order.

(Arif S. Doctor, J)

(M.S. Sonak, J)