

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO. 41 of 2025

IN

WRIT PETITION NO.5318 OF 2022

Saraswati Mansaram Tayade & Ors.

...Petitioners

VS

The Mumbai Housing And Area Development Board
and ors.

..Respondents

Mr. C. K. Tripathi i/b. I.K.Tripathi, for the Petitioner.

Mr. P. G. Lad with Ms. Sayali Apte, for MHADA.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 06 OCTOBER 2025.

P.C.

1. This Contempt Petition is filed alleging contempt of the order dated 16 December 2022 passed by the co-ordinate Bench of this Court. The relevant paragraphs of the said order are required to be noted, which read thus:

“4.Respondents to decide the applications made by the petitioners within 12 weeks from today. Learned counsel for respondents states that till the applications are decided by the respondents, petitioners would not be dispossessed from their respective tenements. Statement is accepted.

5. If the applications are decided against the petitioners, no coercive steps shall be taken by the respondents against the petitioners for a period of two weeks from the date of communication of the order that would be passed by the respondents. During the pendency of the representations, petitioners shall not carry out any construction or alteration of the existing tenements in their possession without obtaining prior permission from the respondents.”

2. Learned Counsel for the petitioners contends that the aforesaid order was

not complied with inasmuch as the representation was not decided within the time prescribed and as directed by this Court in the aforesaid order, as also demolition action was taken in regard to the petitioner's structures on 23 March 2023 which is prior to the decision on representation which amounted to the contempt of the direction as contained in paragraph 5 of the said order.

3. The fact remains that the petitioners had earlier moved this Court in Contempt Petition No. 47 of 2023 alleging the aforesaid contempt. There are substantive orders passed by the co-ordinate Bench of this Court on the said contempt petition on 9 September 2024 wherein the case of the petitioners as also the case of the respondents was considered. The said order is required to be noted which reads thus:

“1. Heard learned counsel for the parties.

2. By this Petition, the Petitioners alleged contempt of our order dated 16 December 2024 in Writ Petition (I) No.34931 of 2022.

3. In our order dated 16 December 2022, we directed the Maharashtra Housing and Area Development Authority (“MHADA”) to decide the Petitioner's application within 12 weeks, i.e., on or before 12 March 2023. We also directed that until the applications are decided, and in case the applications are decided against the Petitioners, for a period of two weeks from the date of communication, the Petitioners will not be dispossessed.

4. Mr Tripathi, on instructions, states that the MHADA disposed of the Petitioner's application on 11 September 2023. Still, the demolitions were carried out between 23 and 26 March 2023, i.e., much before the representations were disposed of. He states that this amounts to an apparent contempt.

5. At least prima facie, we were impressed with Mr.Tripathi's submissions. However, Mr Lad referred us to the Affidavit of Mr Rahul Vhatkar, Executive Engineer of MHADA. The Affidavit explains why the Petitioner's application could not be disposed of within 12 weeks from 16 December 2022. On perusing the reasons, we are prima facie satisfied that this was not a case of willful disobedience of our order concerning the disposal of the Petitioner's applications within 12 weeks.

6. However, the main question is whether our orders were breached by demolishing the Petitioner's structures between 23 and 26 March

2023, as alleged by the Petitioners, even before the Petitioner's applications were disposed of and such an order of disposal was communicated to the Petitioners.

7. On the above aspect, the Affidavit denies that any demolitions were carried out between 23 and 26 March 2023. Paragraph 16 of the Affidavit states that the structures still exist at the given site. At Exhibit 'E', photographs of the existing structures have been collectively annexed. The photographs prima facie show that they were taken on 23 April 2023, 27 April 2023, 4 September 2023 and 8 September 2023.

8. Mr Tripathi, again on instructions, disputes the above position and states that the structures have been demolished and that no structures exist at the site. He states that some officials of MHADA may be deputed to inspect the site in the presence of the Petitioners or their Advocate to ascertain the correct position.

9. Accordingly, Mr. Rahul Vhatkar, Executive Engineer, Kurla Division, who has filed the Affidavit on 12 September 2023, must visit the site on 13 September 2023 at 11.00 a.m. The Petitioners should also remain on-site on the said date and time without insisting upon any separate notice. This order, which Mr. Tripathi states would be communicated to the Petitioners, would constitute more than sufficient notice. Since so many doubts are being expressed on behalf of the Petitioners, even the Advocate for the Petitioner can remain at the site on the said date and time and file their independent reports. Mr. Vhatkar and the Petitioners are at liberty to take pictures at the site and file a report in this Court on the position at the site.

10. List this matter on 23 September 2024 for directions/disposal."

4. It is thus clear that insofar as the time prescribed by this Court to decide the representation of the petitioners, the Court accepting the MHADA's contentions, observing that the reasons for delay in passing the order were acceptable. However, insofar as the case of the petitioners on demolition is concerned, the Court directed that in fact a report be placed on record in terms of what was directed in paragraph 9 namely on a site visit to be held on 13 September 2024. In pursuance thereto such site visit was conducted by the representative of MHADA as also the representative of the petitioner and a report of the site visit dated 13 September 2024 (page 94 of the petition) is placed on

record with the following observations:

“Observations

During the inspection, the following observations were made and noted.

It was observed that the alleged structures are still in existence. Moreover, these structures are in same condition as stated in the Affidavit dt. 12.09.2023 and the same was brought to the notice of Petitioner’s representative Mr. Santosh Tayade and Petitioner’s Advocate Tripathi’s representative Mr. Santosh Thorat and Mr. Atul Redekar.

Photographs were taken, the copies of photographs are annexed herewith.

Conclusion

The site is inspected at 11.00 a.m. on 13.09.2024. It is concluded that the said structures are in existence at present on site as stated in the Affidavit dt. 12.09.2023.

Signatures.

1. Rahul Vhatkar, Executive Engineer,
Kurla Division, Mumbai Board.

2. Varsha Patil, Deputy Engineer
Kurla Division, Mumbai Board.

This report is prepared as per the direction of the Hon’ble Court for submission before the Hon’ble Court.”

5. In view of the aforesaid report when the proceedings of the said contempt petition were listed before the co-ordinate Bench on 24 September 2024 the petitioner sought to withdraw the said contempt petition with liberty to the petitioner to file fresh contempt petition. It is on such backdrop the present petition is filed.

6. We have heard learned Counsel for the parties, we have also perused the record. Further, in our opinion, considering the site inspection report and the stand as taken on behalf of MHADA, it is appropriate that the petitioner pursues

his case in regard to illegal demolition in the writ petition which has already been filed by the petitioner assailing the orders dated 11 September 2023 passed by the Competent Officer of the MHADA in pursuance of the directions of this Court in the proceedings of Writ Petition No.5318 of 2022. We are of the clear opinion that there is no intentional disobedience of the orders passed by this Court so as to take forward the contempt petition. All contentions of the parties in that regard are expressly kept open.

7. The contempt petition is accordingly disposed of, however, with liberty as observed hereinabove.

8. Disposed of. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)