

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION NO. 8 OF 2018**

**IN**

**WRIT PETITION NO. 3023 OF 2016**

Spark Developers and another ... Petitioners

Versus

State of Maharashtra and others ... Respondents

.....

Mr. Rohan Mahadik alongwith Ms. Roshni Thakkar and Nilesh Lonkar instructed by The Juris Partners for the Petitioners.

Ms. Jaymala Oaswal alongwith Ms. Rupali Adhate and Ms. Yamuna Parekh for the Respondent-MCGM.

Ms. Vidya Gharpure, Joint Law Officer, present.

Mr. Manoj Kumar Patil, Assistant Engineer (Maint.), G/S Ward, present.

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**CORAM : S.J. KATHAWALLA AND**

**B.P. COLABAWALLA, JJ.**

**DATED : JANUARY 24, 2020.**

**P.C. :-**

1. The above Contempt Petition is filed by the Petitioners alleging that the Municipal Corporation has not complied with the Order passed by this Court dated 2<sup>nd</sup> November, 2017, more particularly the directions which are reproduced hereunder :

*“..... Since it is the case of the corporation that illegal structures have again come up on the side of the D.P. Road, it would be necessary for the corporation to immediately take steps for the removal of the said structures. If at all the corporation staff requires police protection for the removal of illegal*

*structures/encroachments, then the police protection should be sought for. We direct the corporation to remove the illegal structures on the side of the road within three weeks. The State Government is directed to grant police protection to the corporation authorities and its staff as and when the same is required by the corporation and is requested for. With these observations and directions, we dispose of the writ petition with no order as to costs.”*

2. The Municipal Corporation filed its Affidavit dated 25<sup>th</sup> November, 2019, interalia stating that out of 34 unauthorized structures it had already demolished 28 unauthorized structures and is unable to demolish 6 structures because of the Order passed by the City Civil Court, Mumbai directing the Corporation to maintain status-quo.
3. On 8<sup>th</sup> January, 2020, Ms. Jaymala Oaswal, Panel Counsel of the Corporation (not in-house Advocate) submitted that the City Civil Court is hearing the Notice of Motion No.2667 of 2015 in L.C. Suit No.1504 of 2007, and has now fixed the hearing on 15<sup>th</sup> January, 2020. We recorded the said statement in our Order dated 8<sup>th</sup> January, 2020 and based thereon passed the following directions :-

*“The above Contempt Petition is filed by the petitioners alleging that the Municipal Corporation has not complied with the order passed by this Court dated 2<sup>nd</sup> November, 2017. The Municipal Corporation filed its affidavit dated 25<sup>th</sup> November, 2019 stating that out of 34 unauthorized structures, it has already demolished 28 unauthorized structures and is unable to demolish 6 unauthorized structures because of the order passed by the City Civil Court, Mumbai directing the Corporation to maintain status-quo.*

*Panel Counsel of the Corporation (not inhouse Advocate) informed us that the City Civil Court is hearing Notice of Motion No. 2667 of 2015 in L.C. Suit No.1504 of 2007 and has now fixed the hearing on 15<sup>th</sup> January, 2020. We therefore on the basis of the said statement made in Court inter-alia recorded the said statement and following direction to the City Civil Court.*

*“The concerned Learned Judge of the City Civil Court shall on that day hear the Notice of Motion and pass orders to enable this Court to decide the above Writ Petition.”*

*The parties shall appear before the Learned Judge hearing the Notice of Motion No.2667 of 2015 on 10<sup>th</sup> January, 2020 at 3.00 p.m. and after tendering a copy of this order in Court obtain necessary directions. A copy of this order shall also be forwarded to the Principal Judge, City Civil Court at Bombay.*

*Stand over to 16<sup>th</sup> January, 2020.”*

4. Today, the Learned Advocate appearing for the Petitioners has informed us that the statement made before this Court by the Counsel for the Corporation on 8<sup>th</sup> January, 2020 that Notice of Motion No.2667 of 2015 in L.C. Suit No.1504 of 2007 is fixed for hearing before the City Civil Court on 16<sup>th</sup> January, 2020 was an incorrect statement since the Notice of Motion No.2667 of 2015 in L.C. Suit No.1504 of 2007 was already disposed off by the Learned Judge of the City Civil Court as far back as on 1<sup>st</sup> October, 2015 and there was no hearing fixed on 16<sup>th</sup> January, 2020 with regard to the subject Notice of Motion. Therefore, the directions given to the City Civil Court could not be implemented.

5. Today, the Advocate for the Corporation informed us that it is only on 15<sup>th</sup>

January, 2020, she realized that she had on 8<sup>th</sup> January, 2020 made an incorrect statement before the Court. If the Counsel made an incorrect statement before the Court on 8<sup>th</sup> January, 2020 and realised her mistake on 15<sup>th</sup> January, 2020, she ought to have informed this Court immediately and sought a recall of the order giving directions to the City Civil Court to hear the matter, since the said matter was disposed off four years ago. However, she did not do so despite the matter being shown on the cause list on 16<sup>th</sup> January, 2020. She has no answer to offer as to why she did not move the Court for necessary corrections in the Order on or after 15<sup>th</sup> January, 2020 till date.

6. In view of the above, today we referred to the Affidavit filed by the Corporation dated 25<sup>th</sup> November, 2019 in the above Contempt Petition, which Affidavit is admittedly drafted by the same Counsel. In the Affidavit it is stated that the Corporation *“could not demolish remaining 6 structures as occupier/owners of the structures have filed Suit before Ld. City Civil Court and stay is granted in respect of 6 structures by Ld. City Civil Court vide order dated 23<sup>rd</sup> August, 2017 in Suit No.1504 of 2017. Hereto marked and annexed is the copy of the order passed in Notice of Motion No.2667 of 2015 as Exhibit C”*. We therefore referred to Exhibit “C” and were shocked to note that though it is stated in the Affidavit that an Order dated 23<sup>rd</sup> November, 2017 is annexed as Exhibit “C”, the first and second pages of Exhibit “C” is an Order of Judge Shri. K.Y. Tonge dated 1<sup>st</sup> October, 2015 by which Order he had in fact dismissed Notice of Motion No.2667 of 2015; whereas the third page is part of

some other order passed by another Judge Shri. A.I. Perampalli in some other proceedings on 23<sup>rd</sup> August, 2017. Exhibit 'C' is therefore an amalgam of two orders. It is therefore clear that the Counsel appearing for the Corporation had neither bothered to verify the correctness of the contents of the Affidavit nor the document/order annexed as Exhibit "C" to the Affidavit. The Affidavit was not only prepared without any application of mind by the Counsel, but the Officer of the Corporation i.e. the Deponent of the Affidavit had also blindly signed the same. The in-house Advocate Shri. Mahadik had also not bothered to go through the Affidavit before putting his signature on the same.

7. Every Court operates/functions on the basis of trust. Since it is impossible for the Court to go through each and every page of the Affidavit or the pleadings, the Court accepts the statements made by the Advocates before the Court, presuming that the Advocate making the statement before the Court understands his/her responsibilities as an officer of the court. It is therefore incumbent on the part of the Advocate/s to ensure that no incorrect facts are put on Affidavit as well as before the Court, failing which the Court will be misled into passing incorrect orders as is done in the present matter.

8. We are informed that the Corporation pays a reasonable amount i.e. Rs.50,000/- per matter to the Advocates who are on the Junior Panel 'A' of the Municipal Corporation. However, we have repeatedly noted that the assistance given by some of the Panel Advocates to the Court is not at all satisfactory. We have

therefore enquired from the Chief Law Officer how the Advocates are selected for being empaneled on the Junior Panel “A” and how the briefs are distributed amongst them by the Corporation. We are informed that advertisements are issued by the Municipal Corporation inviting applications from the Advocates and that at present they have about 50 Advocates on the Junior Panel “A” of the Corporation. Since we find that only the same few faces (Panel Advocates) appear before us for the Corporation, we again enquired as to how the briefs are distributed amongst the 50 Advocates currently empaneled. We are informed that the briefs are distributed by the Senior Law Officer and/or the Deputy Law Officer. However, in view of the urgency in some of the matters, the in-house lawyers are now distributing the briefs amongst the panel lawyers. We do not understand what is the urgency in the matters when 99% of the matters taken up during the week are listed on the Weekly Board which is made available every weekend. The Chief Law Officer of the Corporation also informed us that many of the empaneled Advocates are no longer interested in accepting the briefs from the Corporation.

9. In view of the above and for better functioning of the Legal Department of the Corporation, we suggest that the Corporation should immediately invite applications from the Advocates interested in being empaneled on the Junior Panel “A” of the Municipal Corporation setting out therein the fees of **Rs.50,000/-** paid by the Corporation to each of the empaneled Advocate **per matter** and give wide publicity to the same, by displaying the advertisements in all the Bar Rooms/Libraries of the High

Court and thereafter prepare a fresh list of Junior Panel Advocates for representing the Corporation in the High Court. If this is not done immediately the problems arising from time to time in matters will continue and will compel us to summon the Commissioner of Municipal Corporation of Greater Mumbai and appraise him of the present state of affairs.

10. The Prothonotary and Senior Master of this Court shall forthwith forward a copy of this order to the Commissioner, Municipal Corporation of Greater Mumbai.
11. The Learned Judge, City Civil Court shall hear and dispose off the Notice of Motion No.3280 of 2017 finally within a period of two weeks from today.
12. Stand over to 10<sup>th</sup> February, 2020.

**( B.P. COLABAWALLA, J. )**

**( S.J. KATHAWALLA, J. )**