

STATE OF MAHARASHTRA AND ORS.

A

v.

PANDURANG K. PANGARE AND ORS.

FEBRUARY 13, 1995

[R.M. SAHAI AND N.P. SINGH, JJ.]

B

Contempt of Court Act, 1972—Construction on land—Court prohibiting construction—Person alleged to have disobeyed the order already sold the land—Held, not guilty of contempt or perjury but was unfair to Court—Cost of Rs. 10,000 imposed on the alleged contemner.

C

The State Government issued a notification whereby it acquired the land belonging to the respondent. The respondent filed a writ petition in the High Court challenging the said acquisition. The High Court allowed the petition. The State Government filed S.L.P. in this Court against the said judgment. In the meantime the respondent sold his land. Subsequently this Court passed an order that there would be no construction. However, it was found by this Court that construction was being carried on which was denied by the respondent. The appellant filed two application in this Court against the respondent - one for contempt and the other for perjury as he deliberately misled the Court by suppressing facts and making untrue allegations which was denied by the respondent.

D

E

Disposing of the application, this Court

HELD : 1.1. The order prohibiting any construction to be raised over the land in dispute was passed by this Court. It is clear that the respondent had sold his land before the prohibitory order was passed by this Court. There is thus no option but to reject the contempt application against the respondent. [53-H, 54-A, D]

F

1.2. As regards the application for perjury it must be stressed that this Court was baffled by the conduct of the respondent even though he had sold the property. Yet it was the respondent who was not only appearing in this Court but was assuring through his counsel and contesting that no construction was going on in the plot in dispute. The explanation of the respondent that a portion was still in his possession is not convincing. Since the respondent had sold the property and he was not making any

G

H

A construction on the portion which was in his occupation there was no occasion for him to make a statement which was apt to mislead the Court. Technically speaking he may be right that he was not making any construction. But factually he was wrong as construction activity was going on in the plot. He may not be guilty of contempt or perjury but he was certainly unfair to the Court. It is not proposed to take any action against him for perjury but he is directed to pay a cost of Rs. 10,000 which shall be deposited by him within one month with the Legal Aid Committee of this Court. [54-E-H, 55-A-B]

CIVIL ORIGINAL JURISDICTION : I.A. No. 2 of 1993.

C AND

Contempt Petition No. 389 of 1993.

IN

D Civil Appeal No. 7212 of 1993.

From the Judgment and Order dated 8.11.83 of the Bombay High Court in W.P. No. 3585 of 1984.

E S. Ganesh, Mrs. Reema Bhandari and M.N. Shroff for the Appellant.

Ashok H. Desai, U.R. Lalit, Ms Bharti Bheda, D.M. Nargolkar and Rajinder Mathur for the Respondents.

A.S. Bhasme for the State.

F The Judgment of the Court was delivered by

G R.M. SAHAI, J. These are two applications filed by Maharashtra Housing and Area Development Authority (in brief 'MHADA') - one for taking proceedings for contempt against the opposite parties and other for initiating proceedings for perjury against Shri P.K. Pangare (referred in brief as 'Pangare'), the respondent in S.L.P. and opposite party No. 1 in the contempt petition.

H Before adverting to these applications it is necessary to mention in brief the background in which these applications came to be filed. On 12th January 1980 a Notification was issued under Section 41(3) of the

Maharashtra Housing and Area Development Act, 1976 (referred as 'the Act') by the Deputy Secretary of the Government, Housing and Special Assistant Department, Government of Maharashtra whereby it was notified that the lands mentioned in the Schedule vested in the Government of Maharashtra. In pursuance of this Notification name of MHADA was mutated over survey no. 18. The acquisition was challenged by the owner, Pangare by Writ Petition No. 3585 of 1981 on 12th November 1981. It was allowed on 8th November 1983 following the judgment rendered in Writ Petition No. 4192 of 1981 by which sub-sections (3) and (4) of Section 44 of the Act had been struck down as *ultra vires*. The State filed S.L.P. in this Court against the decision in the main writ petition and other writ petitions including the one filed by Pangare which was numbered as S.L.P. No. 3340 of 1984. Notice was issued on it but no interim order was granted. The S.L.P. filed by one Basantibai was allowed in 1986. The judgment and order of the High Court was reversed. It was held that Section 44 of the Act did not suffer from any invalidity. The S.L.P. filed against Pangare was however dismissed on 18th April 1991. On 4th December 1992 an application was filed on behalf of the State seeking review of the Order as the Order was passed under misapprehension. It was stated that at the time of argument it was urged by the learned counsel for the State of Maharashtra that the controversy raised in the petition stood concluded by a decision of this Court which fact was noticed in the Order, yet by mistake in the operative portion it was mentioned that the S.L.P. is dismissed. It was served on Pangare on 7th April 1993. The Order was recalled on 3rd September 1993.

What happened in the meantime that Pangare applied for mutation of his name in the revenue records. Notice of it appears to have been served on MHADA. But it is averred it did not file any reply nor any one appeared. Consequently the application was allowed and the name of MHADA was directed to be deleted and an order was passed directing that the name of Pangare be entered in the revenue records. Pangare sold portion of Survey No. 18 to one Mohd. Shafi Abdul Wahab Shaikh. The said Shaikh in 1990 obtained sanction from the Municipal Council for layout plan and sub-divided the area purchased by him into 7 sub-plots for building purposes. In January 1992 Shaikh sold all the 7 plots by separate conveyance to one Shri S.R. Gupta and six other persons. In October 1992 the revised layout plan was sanctioned by the Municipal Council and the plan was sanctioned in respect of the said plots. Commencement certificate was also issued. Between January to March 1993 plot

A nos. 1 to 6 of Survey No. 18 were sold in favour of M/s. Volition Investments Pvt. Ltd. (hereinafter referred to as 'VIPL') by separate deeds of conveyance.

B When notice of review was served on Pangare he filed reply to the affidavit filed in support of the review application on 27th July 1993. It was stated by him that even though the writ petition had been allowed, but MHADA had not challenged the Order passed by the High Court by way of S.L.P. Therefore, it had no *locus standi* to file review petition. It was stated when his name was mutated over the land he sold it in favour of Shaikh for a total consideration of Rs. 8 lacs. The said Shaikh had issued C Public Notice in the local Lonawala Times indicating his intention to purchase the property, but no objection was filed. Not only that he submitted a revised layout building plan to the Municipal Authorities which was sanctioned. The same procedure was repeated by Shri S.R. Gupta (in brief 'Gupta') when he purchased the land. It was further stated that when D plan was sent by Gupta to Municipal Authorities, notice was given to MHADA but no objection was filed. Notices are stated to have been got published even by VIPL after agreement was entered between Gupta and VIPL. In the Rejoinder Affidavit filed in October 1993 by Shri S.V. Bapat, Assistant Engineer, MHADA in reply to the affidavit filed by the respondent on 21st September 1993 and 1st October 1993, it is not denied that E the MHADA did not receive any notice when Pangare applied for change of mutation of his name over the land in dispute. What has been stated is that MHADA became aware sometime in April 1992 of the proposal to erect multi-storeyed building on the site and then it addressed a letter to the Lonawala Municipal Council pointing out specifically that the S.L.P. F filed by the State was pending and that no building activity should be permitted to be carried on on the land by any one. But according to its own affidavit the Lonawala Municipal Council did not act in accordance with the said reasonable request and proceeded straightaway to sanction the respondent's building plan and also to issue commencement certificate in October 1992. It has been stated that this was done by the Municipal G Council because Gupta to whom the land was sold is a builder and his brother was Councillor of the Lonawala Municipal Council. It is further stated that in March, 1993 MHADA had issued a letter to the Tehsildar that no mutation should be done and it even issued an advertisement in H May 1993 calling upon persons not to purchase any flat or to advance any amount for purchase of flat as the building was being constructed illegally.

When S.L.P. was listed on 17th September 1993 it was brought to the notice of this Court by the MHADA which had come on the scene by now, that the respondents were carrying on construction over the land in dispute. The petition was directed to be listed on 24th September 1993 and an order was passed that in the meanwhile there will be no further construction. When the matter was taken up on 24th September 1993 it was stated by the learned counsel for MHADA that the construction activity was going on which was vehemently opposed by the other side. However, on the request of the learned counsel the petition was adjourned. Since both parties were vehemently refuting allegations of each other, on 15th October 1993 this Court directed the Principal District Judge to make a spot inspection and submit a report if any construction was being carried on. Inspection was made on 22nd October 1993. It was found that construction work was going on in Survey No. 18/2. An affidavit was filed by Pangare denying that any construction activity was being carried on on the land in dispute. When the petition was listed again on 26th November 1993 the application filed by MHADA for impleadment was allowed and the contempt petition filed by it was taken on Board. Notice was directed to be issued on it. The application purported to be against Pangare as opposite party no. 1, Gupta as opposite party no. 2 and four other persons as Chief Promoters of VIPL. In response to this notice reply was filed by Gupta stating that he had already sold the plot and he was not making any construction, therefore, the contempt proceedings may be discharged. Affidavits were also filed by the alleged chief promoters of VIPL stating that they had nothing to do with VIPL and one Harakchand Nagindas Shah, Director. In the circumstances the notices issued against Gupta and others were discharged on 24th October 1994. The MHADA was permitted to implead Harakchand Nagindas Shah, Director of VIPL as opposite party no. 3. Notice was issued to Shri Shah in reply to which he has filed detailed affidavit.

MHADA filed an application for taking proceedings in perjury against Pangare as he was deliberately misleading the Court by suppressing facts and making untrue allegations. In reply Pangare filed an affidavit denying the allegations and reiterating what was said by him in his earlier affidavits.

We shall take up the contempt application first. The order prohibiting any construction to be raised over the land in dispute was passed on

A 17th September 1993. The question is whether this order was violated by any person and if so its effect. From the facts stated above it is clear that Pangare had sold his interest and it was ultimately VIPL in whose favour the property was transferred sometime between January and March 1993. It further appears that this company started construction in June and July 1993. But the contempt application was filed against Pangare, Gupta and B four other persons alleged to be Chief Promoters of the VIPL. It has been mentioned earlier that in view of the affidavits filed by them the notices issued against them were discharged. Shri Shah, the Director of VIPL was impleaded on October 1994 only. Since the day he was impleaded and received the notice which was served on his counsel on the same day in C the Court no construction has been carried on in the land in dispute. Therefore, even though the construction had been started by VIPL in June and July 1993 and it was continued by it even after the order was passed by this Court as stands established by the affidavits filed by the officials of MHADA and the report of Additional District Judge, yet Shri Shah being D not a party and the notice for contempt having not been served either on Shri Shah or on VIPL before November 1994, no proceedings for contempt can be taken against him. There is thus no option but to reject the contempt application against Shri Shah.

E As regards the application for perjury we must confess that we had been baffled by the conduct of Pangare as even though he had sold the property in favour of Shaikh who in its turn sold it in favour of Gupta and it ultimately came to VIPL yet it was Pangare who was not only appearing in this Court but was assuring through his counsel and contesting that no construction was going on on the plot in dispute. The explanation of the F learned counsel appearing for VIPL that Pangare filed his affidavit because a portion was still in his possession, is not convincing. In fact on 17th September 1993 and 24th September 1993 it was Pangare's counsel who vehemently challenged the statement made on behalf of MHADA that any construction was going on. He has in his affidavit filed in reply to perjury, G attempted to whittle down the report of the Additional District Judge by saying that it does not indicate that construction was going on. Since Pangare had sold the property and he was not making any construction on the portion which was in his occupation there was no occasion for him to make such statement which was apt to mislead the Court. Technically H speaking he may be right that he was not making any construction. But

factually he was wrong as construction activity was going on in the plot. He may not be guilty of contempt or perjury but he was certainly unfair to the Court. It is not necessary to say anything further. We do not propose to take any action against him for perjury but we are of opinion that he should be directed to pay a cost of Rs. 10,000 which shall be deposited by him within one month with the Legal Aid Committee of this Court.

This disposes of the two applications filed by MHADA. We may also express our displeasure with the casualness with which MHADA has dealt with the matter. In the affidavit filed by Pangare and Shah it is stated that when Gupta purchased the land he not only notified it but even sent intimation to the MHADA. That was in 1988. Even the VIPL when it entered into an agreement of sale with Gupta is stated to have intimated the MHADA in 1992. But they slept over the matter. No reply has been filed in this Court about the intimation and service of notice to MHADA. Similarly we are also at pains to observe that the Municipal Council despite intimation from MHADA in 1992 that the dispute in respect of the plot no. 18 was pending in the Supreme Court chose to sanction the plan of VIPL. Since sufficient material is not before us we are directing the Chairman of both MHADA and the Municipal Council to make an enquiry into the authenticity of these allegations and if it is true that MHADA was served in 1988 then why no office appeared on its behalf and did not bring it to the notice of the Mutation Authority that dispute was pending in this Court. Similarly we also direct the Chairman, Municipal Council to look into the matter and to find out whether it was correct as stated by MHADA in its affidavit that despite intimation by it the Municipal Council sanctioned the plan of VIPL. If it is found to be true then both the Authorities are directed to take action against the officials concerned and report compliance of it to this Court within six months.

The learned counsel for VIPL vehemently prayed that they may be permitted to complete the constructions. The prayer is rejected. We make it clear that VIPL shall not either itself or through any other person or assignee, raise any further construction nor it shall carry on any building activity in the building till the disposal of the writ petition by the High Court.

In the circumstances of the case indicated above we request the High

A Court to decide the writ petition of Pangare which stands transferred to it in view of the allowing of the S.L.P., within a period of three months from the date a copy of this order is produced in that Court. The Registrar after production of the copy shall obtain orders of Hon'ble the Chief Justice and get the case listed before appropriate Beench for disposal.

B The two applications are disposed of accordingly.

V.S.S.

Petitions disposed of.