

A BOMBAY ENVIRONMENTAL ACTION GROUP AND ANR.

v.

THE MUNICIPAL CORPN. OF PUNE AND ORS.

FEBRUARY 7, 1996

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Contempt of Court Act, 1971 :*

C *Contempt—Violation of Injunction order—Developer proceeding with construction of building—Contempt proceedings—High Court closing contempt proceedings—Builder being co-nominee party bound by the Injunction order which remains in force—Hence no construction can be made contrary to the directions contained therein—Certain prima facie opinion of High Court—Held : Not warranted in the Contempt proceedings.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3450 of 1996.

From the Judgment and Order dated 26.12.95 of the Bombay High Court in C. Application no. 7125/95 in W.P. No. 923 of 1992.

E Gopal Subramaniam, M. Doctor, Ms. Shruti Pandey and Ms. Indu Malhotra, for the Appellants.

E.P. Baroocha, Ms. Fargana and K.J. John for the Respondents.

The following Order of the Court was delivered :

F Leave granted.

We have heard the counsel on both sides.

G The contempt proceedings sought to be taken out against the respondents-builders/developers on the ground that the order passed by the High Court on 23.3.1992 in Writ Petition Nos. 923/92 and 5710/91 has been violated on the premises that in spite of the injunction order granted in terms of para (f) extracted in the impugned order, the developer is proceeding with the construction in plot No. 57, the prayer was turned down by the High Court. It is an admitted fact that two civil suits came to  
H be filed by the owner, R.F. Mulla Trust, in the civil Court and those suits

now stand decreed. As at present the decrees are not subject matter of any appeals. Under these circumstances, the High Court proceeded on the footing that when there is a valid decree passed by civil Court to proceed with the construction of the flats in plot No. 57, the action taken by the builder is not in violation of the order of the High Court. While so holding the Division Bench in the impugned order also pointed out thus :

"We are, however, not inclined to hold that there is any contempt or that any restraint order is necessary."

In view of that finding the contempt proceedings were closed holding that whatever construction is done would be subject to the final orders in the writ petitions.

Shri Gopal Subramaniam, learned senior counsel, contended that though the owner of the land, namely, M/s. R.F. Mulla Trust, had given the right to the developer to construct the building in accordance with law, yet the construction is in violation of law. The appellants approached the High Court that the builders are causing environmental degradation and the matter is pending. Interim injunction was issued restraining the builders to proceed with the construction except in accordance with the certificate issued by the Collector and the rules contained in Appendix 'S' to the Development Control Rules for Pune. The owner had secured injunction in the civil suit by way of a declaration on a misrepresentation that the writ petitions pending in the High Court were disposed of and that there was no stay granted by the High Court to proceed with the construction in plot No. 57. It is contrary to the record, namely, writ petitions are pending and injunction order is still subsisting. Though the appellant is not a party to the proceedings in the suit, the developer, who got his right from the owner and proceeded pursuant thereto, is also bound by the orders of the High Court where he is *eo-nominee* party respondent. The high Court ought to have taken serious view of the matter as the procedure adopted in the civil suit is nothing but to circumvent the orders of the High Court. In that perspective, the High Court ought to have taken serious note of the violation of its orders and proceeded for contempt in accordance with law.

May be, as contended by Shri Gopal Subramaniam the view is possible. But the High Court was not inclined to pursue further action against the developer and held that it was not in violation of the High Court's orders. In the view the High Court had taken, we do not think that

A it is a case for us to interfere. However, it would be open to the appellants to seek such remedy as is available under law to have the decrees of the civil court assailed in an appropriate forum and seek such directions as may be deemed necessary to be consistent with the orders of the High Court so long as the writ petitions are pending. We do not make any further observations in this regard.

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Shri Baroocha, the learned Senior counsel appearing for the respondents, in fairness has stated that the High Court did not intend to vary the order of interim injunction granted in terms of prayer (f). He contended that the respondent is proceeding only in accordance with the rules contained in appendix 'S' to the Development Control Rules for Pune and the certificate given by the Collector and that his proceeding with the matter is not in violation of the order granting injunction on 23.3.1992. We are not concerned with that controversy in this case. If there is anything, appropriate action would be in the High Court itself.

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It is made clear that so long as the order of injunction granted by the High Court on 23.3.1992 is in force and is allowed to remain in force, no construction can be made contrary to the directions contained therein. Any construction should be only consistent with that order and no further.

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We also make it clear that the observation made by the High Court that "we are, therefore, *prima facie* of the opinion that initiation of the buildings on plot No. 57 does not appear to be in breach of the rules" does not warrant such a finding in the contempt proceedings.

The appeal is disposed of with the above observations. No costs.

F G.N.

Appeal disposed of.