

(2014) 03 BOM CK 0172

In the Bombay High Court

Case No : Chamber Summons (L) No. 1487 of 2013 in Execution Application (L) No. 1501 of 2013 in Writ Petition No. 840 of 2011

M/s. Lok Holdings and Constructions Ltd., Darshan Lalit
Gandhi and Atul Shankarlal Parekh

APPELLANT

Vs

Municipal Corporation of Gr. Mumbai and Others

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11 (2), Order 21 Rule 21, Order 21 Rule 22, Order 21 Rule 22(2), Order 21 Rule 37
Constitution of India, 1950 — Article 15, 21, 215, 226
Works of the Defence Act, 1903 — Section 3

Citation : (2015) 4 ALLMR 188 : (2014) 5 BomCR 796

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Jai Chinai, Senior Advocate, Mr. Sanjay Jain, Mr. Kalpesh Mehta, i/b. Pravin Mehta and Mithi, Advocate for the Appellant; Anil Singh, Senior Advocate, Ms. Yamuna Parekh for B.M.C. Respondent Nos. 1 to 4 and Mr. S.R. Rajguru for Respondent No. 6, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By this Chamber Summons in execution application the applicants seek dispensation with notice under order 21 rule 22 of Code of Civil Procedure, 1908 with High Court (O.S.) Rules 316 and 317 of High Court (Original Side) Rules and seeks an order and directions against the Municipal Corporation and its officers (respondent nos. 1 to 4) to decide the application dated 29th February, 2012 made by the applicant no. 1 or in the alternative to appoint a fit and proper person/officer with all powers duties and functions of the Executive Engineer and Ward Officer as per Rules and as per Development Control Regulations Greater Mumbai, 1991 to decide in accordance with the order dated 10th August, 2011 passed by the Division Bench the application dated 29th February, 2012 made by the applicant no. 1. Some of the relevant facts for the purpose of deciding this execution application and the chamber summons are

as under:- On 11th June, 2010, the Executive Engineer, Building Proposal issued a notice to the applicants to stop the erection of building which was carried out on the property bearing CTS No. 153, 153/1 to 3 of Village Malad East. It is case of the applicants that the applicants replied to the said notice and furnished all the documents and called upon the Executive Engineer to withdraw the stop work notice which he failed to withdraw. The Municipal Corporation thereafter by letter dated 16th March, 2011 cancelled the IOD and directed the applicants to handover the original of the said IOD and CC and demolish the work carried out on the said property on the ground that applicants had not submitted NOC from the Ministry of Defence. The applicants filed a writ petition in this court (840 of 2011) and applied for setting aside and/or for withdrawal of the stop work notice, for revalidation of all the plans sanctioned in IOD and commencement certificate. By an order dated 10th August, 2011 the Division Bench of this court disposed of the said writ petition.

2. Paragraphs 4 to 6 of the said order of the Division Bench reads thus:-

4] We have heard learned counsel appearing for both the sides. Perusal of the order impugned in the petition shows that the IOD and CC have been cancelled by the Corporation principally for two reasons, firstly access to the plot of the petitioners is not available and secondly an objection is raised by the defence authority for raising construction on the plot on the ground that the structure if raised will cause danger to the defence establishment. So far as the first aspect of the matter is concerned, the learned counsel appearing for petitioners has pointed out to us that there is a decree passed in favour of the petitioners by the City Civil Court, Bombay granting access to the petitioners plot where construction is proposed to be made. It was urged on behalf of the respondent Union of India that the access that is provided by the decree of the City Civil Court, Bombay is not enough according to the D.C. Regulations and other allied enactments for grant of permission to the proposed building on the plot in question. So far as the proposed construction being raised near the defence establishment is concerned, the learned counsel appearing for petitioners pointed out to us that unless there is a Notification issued u/s 3 of the Works of Defence Act 1903, building permission cannot be refused in favour of the petitioners on the ground that there is defence establishment in the vicinity. It was pointed out to us that a Notification in relation to the defence establishment in question was actually issued by the Collector but subsequently that Notification was cancelled. Thus, it is common ground before us that there is no Notification presently in force issued u/s 3 of the Works of Defence Act 1903. On behalf of the respondents, reliance was also placed on a letter dated 4th November 2010 issued by the Government of Maharashtra to the Commissioner of Bombay Municipal Corporation directing that while sanctioning building plans in relation to the plot where defence establishment is in the vicinity, building permission should not be granted without obtaining no objection from the concerned authority. In our opinion, as there is a statutory enactment occupying the field, viz. The Works of Defence Act 1903, the Government may not have the power to

issue such instructions in respect of defence establishment in relation to which there is no Notification as contemplated by the provisions of the said Act. Taking overall view of the matter, therefore, in our opinion, following order would meet the ends of justice.

5] The order passed by the Executive Engineer of the Bombay Municipal Corporation dated 16th March 2011 challenged in the petition is set aside. The Executive Engineer who has passed the order at Exh. V to the petition is directed to reconsider the matter. The Executive Engineer shall consider whether the access provided to the petitioners by the decree passed by the City Civil Court, Bombay is enough according to the relevant law for grant of IOD and CC to the petitioners. The respondents shall be free to take appropriate steps for getting a Notification in the present case under the Works of Defence Act 1903 issued, if they are so advised. The respondents may submit a proposal to the competent authority in that regard with a copy to the petitioners within a period of four weeks from today. The competent authority to whom the proposal may be submitted by the respondents shall consider that proposal in accordance with the provisions of Works of Defence Act 1903 and grant an opportunity of being heard to the petitioners and any other person who may be entitled for such hearing under the law and decide whether Notification u/s 3 of the said Act is to be issued or not. The competent authority shall make the order as expeditiously as possible and in any case within a period of three months from the date of receiving the proposal. It is clarified that the competent authority is to decide the question whether Notification is to be issued or not on the basis of material produced before that authority only and by this order we have not expressed any opinion whether such a Notification deserves to be issued or not.

6] The Executive Engineer of the Corporation shall take his decision pursuant to this order only after expiry of the period which we have granted to the competent authority for deciding the question of issuing Notification under the Works of Defence Act 1903. In case Notification is issued within the aforesaid period, the Executive Engineer shall go in accordance with the said Notification. In case such a Notification is not issued, the Executive Engineer shall decide the matter in accordance with law and on the basis of material produced before him. Till the Executive Engineer makes a fresh order pursuant to this order, the petitioners shall not carry out any construction on the basis of IOD and CC which have been issued in their favour by the Corporation. Rule is made absolute accordingly with no order as to costs.

3. The applicant no. 1 by its letter dated 2nd December, 2011 sent copy of the said order to the Executive Engineer and pointed out that the applicants had not received any copy of the proposal as was required to be served upon them under the Works Defence Act, 1903 as narrated in paragraph (5) of the order passed by the Division Bench. By letter dated 29th February, 2012 the applicants narrated various meetings held between the representative of the applicant no. 1 with the respondents and called upon them to comply with the order passed by the

Division Bench.

4. The Executive Engineer (BP) alleged that the applicants had started construction of work which allegation is disputed by the applicants by letter dated 13th February, 2013 and called upon the Executive Engineer to comply with the order passed by the Division Bench.

5. By letter dated 11th July, 2013 addressed to the architect of the applicant no. 1 the Executive Engineer informed that in the absence of NOC from the Defence Authority, they could not process/record development permission. In the said letter the Executive Engineer also referred to the letter from Defence authority dated 19th January, 2013 informing that no objection certificate had not been issued by local military authorities. The Executive Engineer also placed reliance on the circular of Maharashtra Urban Development Department dated 4th November, 2010 which provides that the same shall be strictly adhered to before granting process of any development permission near defence vicinity. It is stated in the said letter that on the basis of the documents received from the defence authorities as well as the documents submitted by the applicants to the office of Executive Engineer, after scrutiny of the available documents correspondence till date, the applicants were informed that the office of Executive Engineer could not process account development permission in respect of the subject site which was close/adjacent to defence premises in absence of defence authorities NOC at this stage. In the said letter, the Executive Engineer referred to the order passed by this court in Writ Petition No. 840 of 2011 dated 10th August, 2011. A copy of the said letter is annexed to the chamber summons.

6. The applicants filed application under order 21 rule 11 (2) of CPC and under rule 313 of the Bombay High Court (Original Side) Rules. In the said execution application, the applicants prayed that pursuant to the order dated 10th August, 2011 the Executive Engineer and Ward Officer and/or any fit and proper person/officer of this court be appointed in the event the Executive Engineer or Ward Officer fails to perform, to be directed to execute the order dated 10th August, 2011 to decide the matter in accordance with law and order dated 10th August, 2011 and on the basis of material produced before him and make fresh order to re-validate IOD and commencement certificate by sanctioning the plans. In the said execution application, the applicants have filed this chamber summons for various reliefs.

7. On various preliminary objections raised by the respondents about maintainability of this chamber summons and the execution application, Mr. Jain, learned counsel appearing for applicants submits that the Municipal Corporation has not passed any order directed to be passed by the Division Bench. Learned counsel invited my attention to sections 36 and 141 of the Code of Civil Procedure, 1908. Learned counsel submits that though u/s 36 read with section 141 of the Code of Civil Procedure, 1908, it is provided that the provisions of the Code of Civil Procedure, 1908 relating to execution of decrees shall so far they are applicable be deemed to apply to execution of orders and can be made

applicable in all proceedings in any court of civil jurisdiction, which proceedings does not include any proceedings under Article 226 of Constitution, under Rule 647 of the Bombay High Court (Original Side) Rules, every order made under chapter XXXIII, which chapter provides for rules for issuance of writ under Article 226 of Constitution of India, every order made under that chapter has to be executed as if it were a decree made in the exercise of the ordinary original civil jurisdiction of this court. It is submitted that in view of Rule 647 the High Court Rules, since order passed in a writ petition has to be executed as if it was a decree made in the exercise of ordinary original civil jurisdiction of this court, provisions of order 21 of Code of Civil Procedure, 1908 would be attracted and applicable for enforcement/execution of the order passed by High Court in a writ petition under Article 226 of Constitution of India.

8. In so far as preliminary objections of the respondents that reliefs claimed in the chamber summons and the execution application filed by the applicants are identical and notice under order 21 rule 22 of Code of Civil Procedure, 1908 cannot be dispensed with is concerned, learned counsel submits that though the reliefs claimed in the chamber summons and execution application are identical, that considering the nature of reliefs claimed for execution of an order passed by Division Bench of this court, reliefs in both the proceedings ought to be the same. Learned counsel submits that under Order 21 Rule 22(2) of Code of Civil Procedure, 1908, court has power to dispense with and permit execution if issuance of such notice would cause unreasonable delay and would defeat the ends of justice. It is submitted that since the plans, IOD and commencement certificate are illegally withheld by the respondents, there is extreme urgency and therefore this court shall permit execution of decree and shall issue process in execution of decree without issuing notice under order 21 rule 22.

9. Mr. Jain, learned counsel invited my attention to paragraphs 4 to 6 of the order passed by the Division Bench and would submit that on various issues the plea raised by the respondents in Writ Petition no. 840 of 2011 has been negatived which finding has not been impugned by the respondents by filing any proceeding in Supreme Court. It is submitted that though the Division Bench had directed the authorities to pass an order after considering various issues, Municipal Corporation has not passed any order. Learned counsel submits that on perusal of the letter dated 11th July, 2013 of the Executive Engineer to the architect of the applicants, it is clear that no order has been passed by the Executive Engineer and thus application for execution filed by the applicants seeking compliance of the order passed by Division Bench is maintainable.

10. Learned counsel invited my attention to the order passed by Division Bench on 18th March, 2014 in Review Petition (L) No. 50 of 2013 in Writ Petition No. 840 of 2011 disposing of the said review petition filed by Union of India. It is submitted that the Division Bench in the said order has clearly held that order passed by this court in Writ Petition No. 840 of 2011 does not impose any constraints on the Executive Engineer to reconsider the matter only on certain

grounds but he is bound to reconsider the matter taking into consideration all the facts and circumstances of this case and all the provisions of law and would be bound to take into consideration the conclusive findings if any of the Division Bench. In paragraph (3) of the said order, the Division Bench has recorded the statement made by the Municipal Corporation through their learned counsel that upon reconsideration, the Executive Engineer by an order dated 11th July, 2013 has rejected the application of the respondent no. 1 for an IOD and CC. The Division Bench also recorded the statement of the learned counsel appearing for the applicants that no such order had been served upon the original petitioner. The Division Bench clarified that the rights of the review petitioner if any to raise any contention was not affected by the order sought to be reviewed in any manner whatsoever and disposed of the said review petition. Relying upon the order passed by the Division Bench in review petition, learned counsel submits that it is clear that the Division Bench has made it clear as to what the Executive Engineer is bound to consider while passing order which indicates that no order pursuant to the earlier order passed by the Division Bench has been passed by the Executive Engineer.

11. Mr. Singh, learned senior counsel appearing on behalf of the Municipal Corporation on the other hand submits that this chamber summons itself is not maintainable for seeking enforcement of the order passed by Division Bench in a writ petition. It is submitted that in the alternative, the reliefs claimed in the execution application and the chamber summons are identical and till this court decides whether to issue notice under order 21 rule 22 of Code of Civil Procedure, 1908 or not, execution application itself cannot be entertained by this court. It is lastly submitted that pursuant to the order passed by Division Bench, the Executive Engineer has already passed an order on 11th July, 2013 rejecting the development permission after considering the documents received from defence authorities as well as from applicants and after scrutiny from available documents, correspondence till passing of the said order. It is submitted that if the applicants are aggrieved of the said order/decision of the Executive Engineer dated 11th July, 2013 applicants can adopt appropriate proceedings and not by filing such execution application seeking an order against the authorities to pass an order which is already passed by the authorities.

12. Mr. Rajguru, learned counsel appearing on behalf of the Union of India submits that this chamber summon as well as execution application are not maintainable at all since the order was passed by the Division Bench in a writ petition exercising powers under Article 226 of the Constitution of India and for enforcement of such orders, execution application under order 21 is not maintainable. In support of this submission, Mr. Rajguru, learned counsel placed reliance on judgment of Calcutta High Court in case of Bonbehari Roy and Others Vs. Kolkata Metropolitan Development Authority, and in particular paragraphs 13 to 19 thereof which reads thus:-

13. Rules 53 and 53A of the rules framed by this Court regarding applications

filed under Article 226 of the Constitution of India, being relevant in the present context, are quoted below:--

53. Save and except as provided by these Rules and subject thereto, the provisions of the CPC (Act V of 1908) in regard to suits shall be followed, as far as it can be made applicable, in all proceedings under Article 226 and nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of this Court to make such orders may be necessary for the ends of justice or to prevent abuse of the process of the Court.

53A. The Court may in proceedings under this Chapter impose such terms as to costs and as to giving of security as it may deem fit. Where costs have been awarded by the Court in a writ petition or in an appeal from an order passed on a writ petition, any party entitled into thereto may apply to the Court for execution of the order. The application shall be accompanied by an affidavit stating the amount of costs awarded. The Court may direct the order to be sent to the District Court of the District in which the order is to be executed. The order may be executed by such Court or be transferred for execution to any subordinate Court.

Explanation: This Rule is in addition to the Rules of recovery prescribed under Article 15 to Schedule 1 to the Bengal Public Demands Recovery Act and u/s 36 of the Code of Civil Procedure, 1908.

14. In my view, while the provisions in Section 141 of the CPC remove the doubt about the writ Court's freedom to adopt its own procedures, they, however do not prohibit the writ Court from following the procedures, prescribed in the CPC. Rule 53 of its writ rules clearly shows how this Court has made its writ jurisdiction procedurally free and flexible. It has made it clear that, if necessary, while exercising its writ jurisdiction, it would follow the procedures prescribed in the CPC. In Rule 53A of its writ rules this Court has also spelt out its own power, while exercising its writ jurisdiction, to execute its own orders of certain kinds. There is, however, no reason to say that in the writ rules power to execute its all kinds of orders has not been asserted, because it does not possess such power. Power to execute its own orders is not derived by the writ Court from the relevant writ rules, it is inherent in it that derives the plenary power from Article 226 of the Constitution of India.

15. From the above discussions the following conclusions can be reached. The writ Court that does not exercise any civil jurisdiction is not a "Civil Court" within the meaning of the provisions of the CPC or the Original Side Rules of this Court. So an order passed by a writ Court cannot be executed by the Civil Court in the absence of express power conferred on it for the purpose by law. Though the writ Court is not bound by the procedures prescribed in the CPC, there is no bar to its following any of them if it is found necessary in a given case. For executing its own orders the writ Court possesses the inherent power as a Court of plenary jurisdiction, and it can adopt its own procedures for the purpose. If it is

necessary it can also follow the procedures prescribed by Order 21 of the CPC.

16. I am, however, unable to agree with Mr. Chatterjee that in view of the decision in *Food Corporation of India Vs. S.N. Nagarkar*, as a Court of civil jurisdiction this Court can execute the order passed by this Court in exercise of its extraordinary writ jurisdiction. The decision, though supports the view that an order passed in a writ petition can be executed by following the procedures prescribed in Order 21 of the CPC, does not, however, lay down the law that orders passed by the writ Courts can be executed by the civil Courts. From the judgment (See: para 13 of SCC) it appears that there the execution application was made in the writ petition, that is to say before the writ Court that passed the order.

17. I am also unable to accept Mr. Basu's contention that orders passed by the writ Courts can be enforced only by initiating contempt proceedings. The main purpose of a contempt proceeding is to punish the person who commits contempt of the Court. The initiation of a contempt proceeding may at times bring about the wanted compliance with the order passed by the writ Court, and the event may be a mitigating factor while considering the question of sentence but in a contempt proceeding it may not be always possible to ensure execution and enforcement of the order. The various different modes of execution of orders and decrees, as recognised by law, cannot be resorted to by the Court in a contempt proceeding. On the contrary, in an execution proceeding, the Court, while pursuing the main object and following the recognised modes of execution, on its own motion can simultaneously initiate a contempt proceeding for its limited and special purpose. An execution proceeding begins solely for the benefit of the person who initiates it, the same is not the case in a contempt proceeding, which is aimed at upholding the dignity, majesty and authority of the Court, and in which the person initiating the proceeding in no time loses his identity. So a contempt proceeding can never be a substitute for an execution proceeding.

18. In view of the above this application (E.C. No. 58 of 2003) fails; and hence it is hereby dismissed as not maintainable in this ordinary original civil jurisdiction of this Court.

19. It is, however, made clear that I have not decided the matter on merit, and this order shall not prevent the petitioners from initiating a fresh proceeding for the same relief before the competent forum, if otherwise permissible in law.

13. It is submitted by Mr. Rajguru, learned counsel that even if provisions of order 21 of Code of Civil Procedure, 1908 are made applicable for enforcement of the orders passed by the Writ court, writ court does not exercise any civil jurisdiction and is not a civil court and thus order passed by a writ court cannot be executed by a civil court in absence of any expressed power conferred on it for the purpose by law. Mr. Rajguru adopts the submissions made by Mr. Singh, learned senior counsel on other issues.

14. Questions that arise for consideration of this court in the execution

application is whether (I) this execution application filed under the provisions of Code of Civil Procedure, 1908 read with High Court (Original Side) Rules for seeking execution/enforcement of the order passed by the court exercising powers under Article 226 of Constitution of India is maintainable (II) if this application is maintainable, whether notice under order 21 rule 22 can be dispensed with (III) whether the executive engineer has already passed an order pursuant to the order passed by the Division Bench in the writ petition on 10th August, 2011 and therefore the applicants can not file such execution application at all.

15. On conjoint reading of section 36 read with section 141 of Code of Civil Procedure, 1908, it is clear that the procedure provided in the CPC in regard to suits shall be followed as far as it can be made applicable in all proceedings in any court of civil jurisdiction but does not include any proceedings under Article 226 of the Constitution. The explanation was inserted in section 141 by CPC (Amendment) Act, 1976 by section 47 w.e.f. 1st February, 1977.

16. Chapter XXIII of the Bombay High Court (Original Side) Rules applies to the applications for writ under Article 226 of the Constitution. Rule 647 provides that every order made under Chapter XXXIII shall be executed, as if it were a decree made in the exercise of ordinary original civil jurisdiction of this court. The Calcutta High Court in case of Bonbehari Roy (supra) while considering Rules 53 and 53A of the rules framed by Calcutta High Court regarding applications filed under Article 226 has held that the writ court does not exercise any civil jurisdiction and is not a civil court within the meaning of provisions of Code of Civil Procedure, 1908 or as per the original side rules of that court. It is held that an order passed by a writ court cannot be executed by a civil court in the absence of expressed power conferred on it for the purpose by law. Though the writ court is not bound by the procedures prescribed in Code of Civil Procedure, there is no bar to its following any of them if it is found necessary in a given case. It is further held that for executing its own order, the writ court possesses the inherent powers, a court of plenary jurisdiction and it can adopt its own procedure for the purpose. If it is necessary, it can also follow the procedure prescribed by under order 21 of the Code of Civil Procedure, 1908.

17. A perusal of the rule framed by the Calcutta High Court considered by the Calcutta High Court indicates that the same is not in pari-materia with rule 647 of the Bombay High Court (Original Side) Rules. In my view Rule 647 of the Bombay High Court (O.S.) Rule clearly provides that every order made under chapter XXXIII which rule relates to the issuance of writs under Article 226 of Constitution other than habeas corpus shall be executed as if it were a decree made in the exercise of ordinary original civil jurisdiction of this court. Rule 647 of the Bombay High Court (O.S.) Rules reads thus:-

R.647. Execution of orders.-

Every order made under this Chapter shall be executed, as if it were a decree

made in the exercise of the Ordinary Original Civil Jurisdiction of this Court.

18. The Division Bench of this court in case of *Rashtriya Mill Mazdoor Sangh Vs. M/s. Khatau Makanji Spg. and Wvg. Co. Ltd. and others*, has held that an offending party may be guilty of civil contempt for deliberate and intentional disobedience of the order of the High Court passed under Article 226 although such order is capable of execution as decree. This court also held that merely because the High Court Rule 647 of the rules framed by this court provides that order passed by this court under Article 226 is executable as if decree, it shall not take away its power to punish for contempt of itself as a court of record. Paragraphs 13 and 14 of the said judgment in case of *Rashtriya Mill Mazdoor Sangh* (supra) read thus:-

13. The learned Counsel for the notices reiterated the averments made in the affidavits and sought to urge that no case of civil contempt is made against them. First of all I may deal with the contention raised by Mr. Tulzapurkar on behalf of M/s. K. Madhav Kumar, Melvin Tellis and B.D. Basu. By referring to Rule 647 of the High Court Rules (O.S.), he would urge that the order passed by this Court on 6-5-1997 is executable as decree and therefore question of civil contempt does not arise. In support of his contention he relied upon *Babu Ram Gupta Vs. Sudhir Bhasin and Another*, . He would also place reliance on *Jolly George Varghese and Another Vs. The Bank of Cochin*, and submit that in execution of money decree, if judgment debtor has no means to pay, he cannot be arrested and detained in the absence of mala fides and dishonesty, a fortiori, for non-compliance of the order passed by this Court due to non-availability of funds with the company, its directors cannot be held guilty of civil contempt and ordered to suffer punishment.

14. The contention of Mr. Tulzapurkar is not acceptable. The direction contained in the order dated 6-5-1997 is couched in terms of mandate to the company to pay to its workers salary for the month of February 1997, on or before 20-5-1997. Such order passed by this Court in exercise of its extra ordinary jurisdiction under Article 226 of Constitution of India, when not complied and if wilfully disobeyed, would definitely render the company liable to civil contempt under Contempt of Courts Act as well as under Article 215 of Constitution of India. Merely because the High Court Rules provide that order passed by this Court under Article 226 is executable as decree, it shall not take away its power to punish for contempt of itself as a Court of record. As it is, the High Court being Court of record has inherent power to punish for its contempt; the constitutional provision under Article 215 leaves no manner of doubt about High Court's power to commit for its contempt. A money decree, contested or on compromise, passed in exercise of ordinary civil jurisdiction, bereft of any undertaking, if not satisfied can be executed as per the execution machinery provided under CPC and shall not entail the consequence of committing the judgment-debtor to contempt but the said principle cannot hold good for wilful disobedience or non-compliance of the order or direction in the nature of

command given by the High Court in exercise of extra ordinary jurisdiction, though such order or direction may be executable as decree. An offending party may be guilty of civil contempt for deliberate and intentional disobedience of the order of this Court passed under Article 226 although such order is capable of execution as decree. Babu Ram's case relates to consent order, a prohibitive one, passed in exercise of Ordinary Appellate Civil Jurisdiction which had no undertaking and in that context the Apex Court held that disobedience of compromise decree or consent order by itself does not amount to contempt. Babu Ram's case thus cannot be applied to the present case. Reliance placed on Jolly George Varghese's case by Mr. Tulzapurkar is also misplaced. The said judgment refers to the provisions contained in section 51 and Order 21, Rule 37 C.P.C. and the question is posed whether the proviso to section 51 read with Order 21, Rule 37 C.P.C. is in excess of constitutional mandate in Article 21 of Constitution and bad in part but the said question is not decided. In Jolly George Varghese, the judgment debtors suffered a decree and in execution of that decree warrant of arrest" and detention was issued u/s 51 and Order 21, Rule 37 C.P.C. The executing Court did not investigate the current ability of judgment debtors to clear off the debts or their mala fide refusal before issuance of warrant of arrest and detention. The observations made by the Apex Court in paragraphs 9, 10, 11, 12 and 13 have to be read in the background of said facts and provisions of section 51 and Order 21, Rule 37 C.P.C. which I am afraid cannot be applied to the case in hand; a case wherein direction was given by this Court to pay wages to its workers (6000 in number) on or before particular date and the said direction has not been complied with so far.

19. I am therefore of the view that execution application for enforcement/execution of the orders of the writ court under Article 226 of Constitution of India is maintainable in view of rule 647 of the Bombay High Court Rules as if it were a decree made in exercise of the ordinary original civil jurisdiction of this court. The judgment of Division Bench in case of Rashtriya Mill Mazdoor Sangh (supra) also has after interpreting rule 647 has held that order passed by writ court under Article 226 can be executed as if a decree made in the exercise of ordinary original civil jurisdiction of this court. I am therefore not inclined to accept the submissions made by Mr. Singh learned senior counsel appearing for Municipal Corporation and Mr. Rajguru, learned counsel appearing on behalf of Union of India that execution application for execution of the order passed by the Division Bench in writ petition under Article 226 of the Constitution of India is not maintainable. Original Side Rules framed by High Court regarding the regulations of their own procedure would prevail and take precedence over CPC 1908.

20. In so far as submission of Mr. Singh, learned counsel appearing for he Municipal Corporation that notice under order 21 rule 22 of CPC cannot be dispensed with as prayed by the applicants is concerned, a perusal of order 21 rule 22(2) of CPC indicates of an exception and powers of the executing court to dispense with and/or not to insist for issuance of any process in execution of a decree without issuing the notice if it comes to the conclusion that issue of such

notice would cause unreasonable delay or would defeat the ends of justice. There is thus no merit in this submission of Mr. Singh, learned senior counsel for the Municipal Corporation.

21. The question now arises is whether applicants have made out a case for dispensing with notice under order 21 rule 22 of CPC or not. At this stage it would be also necessary to consider whether the letter dated 11th July, 2013 from the Executive Engineer amounts to an order/decision of the authority or not.

22. A perusal of the documents annexed to the affidavit in support of the chamber summons and also the affidavit in reply filed by the respondents indicates that there was correspondence exchanged between the parties for complying with the order passed by Division Bench of this court on 10th August, 2011. A perusal of the letter dated 11th July 2013 which according to the applicants is not an order and therefore execution application for execution of the order dated 10th August 2011 is maintainable is concerned, on plain reading of the said letter, it is clear that the said letter refers to the order passed by the Division Bench of this court on 10th August 2011 in Writ Petition no. 840 of 2011. The said document also refers to the letter from defence authorities dated 9th February, 2012 wherein the Lt. Col. Adm. has raised concern for national security and security of defence installation because of right of way required was the defence land. It also records that no objection certificate has not been issued by local military authorities and refers to a circular issued by Government of Maharashtra required to be followed before granting any permission/no objection by the authority. In last paragraph of the said letter it is stated that on the basis of documents received from defence authorities as well as submissions made by the architect of the applicants to the office of Executive Engineer and after scrutiny of available documents, the executive engineer could not process development permission in respect of the subject site which was close/adjacent to defence premises, in absence of defence authorities NOC at this stage. In my view the executive engineer has already conveyed its decision to the applicants through their architect that the application for development permission could not be processed for the reasons stated therein. I am thus not inclined to accept the submission of Mr. Jain, learned counsel appearing for the applicants that no order/decision is rendered by the executive engineer pursuant to the order passed by the Division Bench. In my view reliance placed by Mr. Jain on the order dated 18th March, 2014 passed in Review Petition to canvass that Executive Engineer has not passed any order is misplaced.

23. A perusal of the affidavit in support of the chamber summons indicates that it is grievance of applicants that the respondent nos. 1 to 4 have not bothered to obey the orders and directions issued by this court on 10th August, 2011 and had deliberately and willfully re-insisted to obtain NOC from the defence authority which was the main cause for filing the said writ petition. It is clear that the applicants have sought to impugn the order passed by the executive engineer on merits which in my view cannot be decided by an executing court.

Whether such order/decision rendered by the executive engineer is validly passed or not and/or not passed in compliance with the order passed by Division Bench or not, such issue cannot be decided by the executing court. The applicants may adopt appropriate proceedings for impugning the said order/decision in appropriate court.

24. Since I have rejected the submissions of the learned counsel appearing for the applicants that the letter dated 11th July, 2013 is not an order and holding that by the said letter dated 11th July, 2013 the executive engineer has passed an order/decision, I am not proposing to go into the issue whether notice under Order 21 rule 22 ought to have been dispensed with in this case or not. In my view since the executive engineer has already passed an order/decision, execution application is not maintainable in this case and deserves to be dismissed. Chamber summons also accordingly does not survive and also deserve to be dismissed. I, therefore pass the following order:-

(a) Chamber Summons (L) No. 1487 of 2013 and Execution Application (L) No. 1501 of 2013 are dismissed. There shall be no order as to costs.

(b) It is made clear that this court has not expressed any views about the legality and validity of the order passed by the executive engineer on 11th July, 2013 and the said issue is kept open.