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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CONT.CAS(C) 833/2011

% **Judgment dated 06.02.2013**

BOULEVARD MCD RESIDENTS WELFARE
ASSOCIATION

..... Petitioner

Through: Ms.Sunita Bhardwaj, Advocate

versus

DY COMMISSIONER OF POLICE NORTH & ANR..... Respondent

Through: Ms.Ruchi Sindhwani, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Petitioner alleges willful disobedience of the orders dated 13.07.2004 and 08.05.2006 passed in the Writ Petition No.3554/2003. Writ Petition No.3554/2003 was filed by the petitioner which is the welfare Association of Boulevard Road, MCD Flats owners. In the writ petition it was prayed that a writ of Mandamus be issued to the respondent to complete the boundary wall of the residential complex of the petitioner association. A direction was also sought to DDA to provide security arrangement for the residential complex.
2. The main grievance of the petitioner in the said writ petition was that a jhuggi jhopri cluster has been allowed to come up on government land abutting to the colony of the petitioner association and the jhuggi dwellers have breached the boundary wall of the colony to enable them to trespass into the colony leading to thefts and compromising to the security of the

residents of the complex.

3. During the pendency of the matter, the petitioner association proposed to construct the boundary wall at their own expenses and sought a direction to the SHO of the local police to provide adequate protection to the labours engaged by the petitioner association for the purposes of repair/reconstruction of the boundary wall. The said writ petition was disposed of with a direction inter alia that the petitioner would be entitled to repair / reconstruct the boundary wall enclosing the colony known as MCD Flats, Boulevard Road, and the SHO of the local Police Station was to provide adequate police protection to the labour engaged by the petitioner association for the purposes of repair / reconstruction of the boundary wall. Aggrieved by the aforesaid order, CM.No.1609/2005 was filed by the slum dwellers in the aforesaid writ petition, which was disposed of on 08.05.2006. The said order was also challenged by preferring an LPA No.1105/2007 filed by the slum dweller, which was also dismissed on 30.07.2007. A review application No.323/2007 was also filed in the said LPA, which was also dismissed on 05.09.2007. A Special Leave Petition No.17080/2007 filed by the slum dwellers also met with the same fate.
4. Since the Police was not rendering necessary assistance as directed vide order dated 13.07.2004 the petitioner was forced to file Cont.Cas (C)No. 287/2007, in which notice was issued and the petition was finally withdrawn on 29.01.2009, wherein the following order was passed:

“CM.1281/2009 in Cont.Cas (C)No. 287/2007

After some arguments, learned Counsel for petitioner wishes to withdraw the present application with liberty to file appropriate proceedings in accordance with law.

Accordingly, present application is dismissed as withdrawn with the aforesaid liberty.

Cont.Cas (C)No. 287/2007

After some arguments, leaned Counsel for petitioner wishes to withdraw the present petition as having become infructuous against the present contemnors.

Consequently, the present petition is dismissed as withdrawn.”

5. Counsel for the petitioner submits that initially the petitioner association had repaired some portion of the wall, but on account of financial constraints all the breaches could not be repaired by them. Counsel for petitioner further submits that even otherwise the repairing of the boundary wall is a continuous cause of action and this has led to the filing of the present contempt petition.
6. Counsel appearing for the respondent submits that the present contempt petition is not maintainable, as the petitioner had not reserved its right to file a subsequent contempt petition on the ground that the association did not have enough funds to carry out repairs of the entire boundary wall, which arguments have been raised during the course of the present contempt petition.
7. Counsel for the respondent further submits that initial contempt petition pertained only to one breach, which is evident from the pleadings. Counsel for the respondent has placed reliance on the copy of the daily diary filed along with counter affidavit which reads as under to show that the earlier order was complied with.

“DD NO.21A Dated 10.09.07 P.S. Civil Lines, Delhi.

Insp. Omprakash

Time 9.30 PM, I alongwith the staff vide DD No.33B of today after performing the arrangement duty at MCD flats Boulevard Road, Civil Lines, Delhi in compliance to the order of Hon'ble Delhi High Court. Today, the program of completion of the order of the Hon'ble Delhi High Court was fixed in connection with CWP.No.3554/03 was fixed. As per order necessary Police protection was provided to the petitioner to re-erect, re-construct the boundary wall as per order. The petitioner have completed the work as per order and given as under taking in writing about Completion of work peacefully. During the operation no untoward incident happened and everything was finished smoothly. The outforce & local Police was relieved from the spot at 7:30 PM (PCR Calls received in the P.S.Are checked & found that DD No.13B was filed as no action was required DD No.57B is filed as no complainant was present. DD No.58D is filed on Compromised, no other PCR Call is received."

8. Relying on the daily diary, counsel for the respondents submits that it had been noted that the work has been completed peacefully and the petitioner had given an undertaking in writing about the completion of the work. Counsel further contends that even at that stage the petitioners did not reserve their rights, neither brought to the notice of the police that there were other breaches as well. Counsel next submits that the area has completely changed from the year 2005, when the aforesaid order was passed as the photographs placed by the petitioner on record shows that some shops have been constructed and the shutters appear to be opening on the slum side where some transporters are occupying the area. Counsel for respondent also submits that in case police protection is granted to comply with the orders dated 13.07.2004 and 08.05.2006, it may lead to multiplicity of proceedings, in view of change of circumstances. Counsel further submits that obviously rights would have

- been created in the aforesaid shops and structures. She further submits that in case police protection is granted and the petitioner is permitted to carry out repairs of breaches, it may even lead to a law and order problem.
9. Counsel for the petitioner relies on Annexure P-3 (at page 26) filed with the Cont.Cas. No.287/2007 in support of her submission that in the representation made to the DCP, North it was pointed out that the association is not in a position to carry on entire repair work in one stretch due to paucity of fund and other resources and thus reserved their right to carry on remaining repair work at later stage, in compliance of the orders of the court.
 10. I have heard counsel for the parties and find force in the submission made by counsel for the respondent. File of the earlier Cont.Cas (C)No. 287/2007, was also called and perused by this court.
 11. I find force in the submission made by counsel for the respondents that orders dated 3.07.2004 and 08.05.2006 passed by this court have been complied with and thus the present petition is not maintainable. It may be noticed that the petitioner had filed Contempt Petition No.287/2007 seeking compliance of the orders dated 08.05.2003 and 14.07.2004. Reply to the contempt petition was filed. Police protection was granted to the petitioners and they were permitted to complete the re-construction of the boundary wall. Since the order was complied with, the contempt petition was withdrawn on 29.01.2009.
 12. I also find force in the submission of counsel for the respondents that the earlier contempt petition was withdrawn, as having become infructuous and the withdrawal of the contempt petition was unconditional. DD No.21-A dated 10.09.2007, Police Station Civil Lines, Delhi, copy of which has been placed on record shows that it was recorded by the officer of the respondent that the construction work stands completed. I also find

force in the submission of counsel for the respondent that in case police protection is provided at this stage it is likely to cause multiplicity of proceedings, in view of material change in circumstances, as the photographs filed by the petitioner itself would show that a two storeyed building has come up having shops on the ground floor and residence on the first floor.

13. It is noticed that the order of which contempt is averred was passed as far back as on 13.07.2004, and the petitioner filed the first contempt petition in the year 2007 which was dismissed as withdrawn, at that stage, it was open for the petitioner to either have reserved her right to approach this court again or should have taken leave or at least have pointed out to the court that the petitioner cannot carry out repair work in one stretch on account of paucity of funds. There is also no explanation for the delay in filing the present contempt petition in the year 2011. Counsel for the respondent points out that as per section 20 of the Contempt of Courts Act, 1971 the limitation for filing a contempt petition is one year from the date of the order. Counsel for the petitioner has relied upon *Pallav Sethe Vs. Custodian and Others* 2001 (7) SCC 549, in support of her submission that the limitation would only start when a person learns about the violation of the order.
14. The aforesaid judgment is not applicable to the facts of this case, as the petitioner has been aware about the breaches in the boundary wall from the year 2004 onwards and thus it cannot be said that the petitioner was not aware of the same.
15. Counsel for the petitioner has also relied upon *Bihari Lal & Anr. Vs. V.M. Bansal & Ors.* 101 (2002) DLT 115 and more particularly paragraph 9, which reads as under:

“9. Learned Senior Counsel for respondent no.4 has also relied upon the judgment of the Supreme Court in *Pallav Seth v. Custodian and Other*, V(2001) SLT 702=2001(7) SCC 549, which discussed the issue of period of limitation within which an application of contempt can be filed. The expression initiation of contempt proceedings was considered in terms of Sections 17 and 20 of the Contempt of Courts Act, 1971. It is held that period of one year would commence from the date on which the commission of contempt came to the knowledge where that had been concealed by fraud or dishonest conduct of the contemner. Learned Counsel thus contends that in whatever manner the judgment is read, the petition filed by the petitioner in September, 1999 would be barred by time.”

16. The submission made by counsel for the petitioner is that this is a continuing cause of action and is without any force, as the cause of action was available with the petitioner at the time when the writ petition was filed, and thereafter when the first Cont.Cas(C)No.287/2007 was filed. It is not a case where during the pendency of the contempt petition or thereafter any such breaches have been made. The breaches referred to the petition have been in existence throughout and in fact the petitioner has not been careful or diligent and have allowed such a situation to arise where number of shops have been erected.
17. It has been repeatedly held that the power to punish for contempt is a special power, which is to be exercised with care and caution and should be used sparingly by the courts on being fully satisfied with regard to the contemptuous conduct of a party. It would be useful to reproduce the observations of the Supreme Court in the case of *Jharieswar Prasad Paul and Another Versus Tarak Nath Ganguly and Others* 2002 Cri.L.J. 2935:

‘The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Since the respect and authority

commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the Court exercising the jurisdiction to punish for contempt does not function as an original or appellate Court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt

proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.’

18. No grounds made out to initiate contempt proceedings. Accordingly, the petition is dismissed. Notice of contempt is discharged.

G.S.SISTANI, J

FEBRUARY 06, 2013

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