

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: CPLPA No. 13/2018
In APLPA No. 25/2018
IA No. 2/2018
IA No. 3/2018
IA No. 1/2018
c/w CPLPA No. 10/2018

Shiv Kumar, age 37 years
S/o Sh. Hari Lal Lalhal, ...Petitioner(s)/Appellant(s)
R/o Village Kanthal, Tehsil
Basohli, At Present Chak Sona
Nupa, Kathua

Through: Mr. Karman Singh Johal, Advocate.

V/s

01. Rohit Khajuria, Deputy Commissioner, Kathua. Respondent(s)

02. Sh. Jatinder Misra
Assistant Commissioner, Revenue,
Kathua.

03. Sh. Avtar Singh Jasrotia,
Tehsildar, Kathua.

04. Sh. K. K. Mangotra
Chief Engineer, Irrigation, Jammu.

05. Sh. Anil Gupta
Executive Engineer,
Irrigation Division, Kathua.

06. Sh. Rajesh Gupta,
Executive Engineer,
Town and Drainage Division,
Transport Nagar, Yard No.1,
Narwal, Jammu.

07. Sh. D. K. Ram Pal,
Executive Engineer,
Public Works (R&B) Department,
Division Kathua

Through: Ms. Monika Kohli, Sr. AAG.

**CORAM: HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

**ORDER (ORAL)
21.02.2025**

(Atul Sreedharan-J)

01. Both the contempt petitions are pending since the year 2018. The first contempt petition which has been filed is CPLPA No. 10/2018.

The brief facts of the case are as follows;-

02. It is a contention of the contempt petitioner that a boundary wall was destroyed in an act of contempt of order dated 18.12.2017 passed by a Coordinate Bench which is passed in an LPA preferred by the contempt petitioner against the order passed by the learned Single Judge dated 10.11.2017.

03. By the said order, the Coordinate Bench in paragraph 2 affirmed the order passed by the learned Single Judge which had directed the contemnors herein to consider the case of the contempt petitioner after giving him an opportunity of hearing preferably within a period of six to eight weeks.

04. Learned Single Judge had also directed that the appellant/petitioner shall not be dispossessed from the land in question without following due process of law provided it is established that the appellant/petitioner is the owner in possession of the subject land. That part of the learned Single Judge's order merged with the operative portion of the Coordinate Bench's order which held that it found no reason to interfere in

the decision of learned Single Judge and further directed that if after following due process of law it is found by the authority concerned that the appellant/petitioner is not entitled to any portion of land then possession thereof shall not be taken till one week after passing of the speaking order.

05. It is also held that the authority concerned was in view of the facts that an opportunity of hearing has been given to the appellant/petitioner to consider the carrying out of fresh demarcation in respect of 09 Marlas of land claimed by the appellant/petitioner in Khasra No. 149 min.

06. Learned counsel for the petitioner has argued that the said direction notwithstanding, the contemnors, in gross violation of the said order, without giving him a notice of demolition, demolished the boundary wall and dug a trench for laying down of the drain for its public utility service. On account of such act of the contemnors, the CPLPA No. 10/2018 was filed in which the order dated 13.03.2018 was passed whereby, status quo was ordered to be maintained.

07. Learned counsel for the petitioner also submits that the status quo order was also flouted and the contemnors continued with the excavation on the said land even after the passing of the order dated 13.03.2018.

08. Mr. Monika Kohli, learned Sr. AAG appearing on behalf of the contemnors has vehemently denied the allegations. She has stated that pursuant to the order passed by the learned Coordinate Bench on 18.12.2017, the Deputy Commissioner, Kathua gave an

opportunity of hearing to the contempt petitioner on 05.03.2018, heard the contempt petitioner and also took into account his written submissions. It recorded the crux of the contempt petitioner's case to the extent that he had purchased a plot of land in Khasra No. 149 by a sale deed dated 25.02.2000, and thereafter, the said land was mutated in his favour vide No. 1361 dated 17.01.2002 and that the plot of land is in his possession since then.

09. Learned Sr. AAG has referred paragraph No. 2 of the said judgment wherein the Coordinate Bench had even given the option of carrying out fresh demarcation of land if need be. She further stated that in compliance of the same, the land was again got demarcated by the Tehsildar, Kathua whose report was taken into consideration and as per which mutation No. 1361 dated 17.01.2002 was alleged to have been prepared after concealing the factual position. Thereafter, it has passed the order dated 05.03.2018 itself and set aside the mutation No. 1361 dated 17.01.2002 and directed the Tehsildar Kathua to make the necessary correction in the Revenue Records and thereafter, also directed the Assistant Commissioner to initiate the departmental enquiry against the erring officers for making the incorrect revenue entry and directed the Executive Engineer to complete the remaining work of Deep drain Nallah as per the approved alignment of the project. In pursuance to the second direction, the Executive Engineer carried out the demolition of the boundary wall seven days after the order was passed which is 13.03.2018.

Under the circumstances, learned Sr. AAG negating the submissions put forth by the learned counsel for the contempt petitioner, has stated that the order passed by the Coordinate Bench dated on 18.12.2017 is very clear and that it was only required of the contempt petitioners to hold their hands for seven days after the passing of this speaking order which, according to learned counsel for the contemnors was complied with in its letter and spirit.

10. Learned counsel for the contempt petitioner has submitted that the contempt petitioner was never intimated of the said order dated 05.03.2018 as regards this, learned Sr. AAG has drawn the attention of this Court to the documentation relating to the dispatch of the order dated 05.03.2018 by UPC to the contempt petitioner, which the contempt petitioner has vehemently refuted of having received the same.

11. Learned Sr. AAG has also submitted that Mr. Rohit Khajuria, who was the then Deputy Commissioner of Kathua and he was retired since then, has appeared pursuant to the previous order passed by this Court has also filed his personal affidavit and the same is taken on record. She has also stated that Mr. Rohit Khajuria has an impeccable reputation with regards to his integrity and honesty. As far as that aspect of argument is concerned, we find that the same is not germane in a contempt petition. The integrity and honesty of a public servant is no defence against wilful, disrespect/contempt of order passed by this Court or any Court.

12. In the course of hearing a contempt petition, the Court is only concerned whether the order passed by this Court has been complied with its letter and spirit and no further.

13. As regards the conclusion of the contempt petition, the same can only result in the punishment of the contemnor and for that, this Court must be absolutely certain without a shadow of doubt that the contemnor who is sought to be sent to prison for violation of its order is indeed responsible for wilful disobedience of its order.

14. However, in the facts and circumstance of the present of case, it is impossible for this Court to arrive at such a finding where the contempt petitioner says that there has been no compliance/documents on record which have been filed by way of objection showing that the petitioner was given an opportunity of appearance which he seems to have been availed, as is recorded in the order dated 05.03.2018 and that his written submissions were also taken into account and only thereafter, the order was passed. That order also reflects that a report was called from the Tehsildar, Kathua with regard to re-demarcation of the property wherein it was found that previous revenue entry relied by the contempt petitioner was erroneous and was directed to be struck out. Since there has been compliance on record, this Court cannot see the degree of compliance which is impossible to ascertain from the facts and circumstances of the case.

15. As regards the photographs which have been filed along with the contempt petition (LPA No. 13/2018) in order to show that

there was excavation that was carried out even after the order of *status quo* was passed in CPLPA No. 10/2018. From the photographs, it is impossible to conclude whether the JCB was operating on the land where the status quo was ordered or on the adjoining land as the photographs show the filling up of a Tractor Trolley with dirt that has already been excavated but does not show any further excavation in the trench which was allegedly excavated earlier on 12.03.2018. In such a situation, the Court is unable to arrive at a finding that contemnors are guilty as charged by the contempt petitioner.

16. Under the circumstances, proceedings in both the contempt petitions are closed.

17. Both the contempt petitions are ***'disposed of'*** as being inconclusive.

(RAJESH SEKHRI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

Jammu
21.02.2025
Renu

