

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION (MAIN) NO. 3 OF 2015

Saligao Civic and Consumer Cell
Through Its Joint Secretary Mr. Maria
Mascarenhas.

... Petitioners

V e r s u s

1. Shri Kewal K. Sharma,
The Chief Secretary, Govt. Of Goa & 3 Ors.

... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.
Mr. A. N. S. Nadkarni, Advocate General with Mr. D. Lawande, Government
Advocate for the Respondents.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Date : **11th September, 2015**

ORAL ORDER *(Per F. M. Reis, J.)*

Heard Shri Nigel Costa Frias, learned Counsel appearing for the
Petitioners and Mr. A. N. S. Nadkarni, learned Advocate General appearing for the
Respondents.

2. The above Contempt Petition has been filed by the Petitioners on the
ground that whilst disposing of Writ Petition no. 28 of 2003 by Judgment and Order
dated 30.07.2003, there were specific observations therein, which read thus :

“Although Calangute is termed as a Panchayat, it is a
semi-urban area where there are innumerable hotels and
shacks on the beach area, which generate both bio and
non-biodegradable waster. The dumping site is on a

plateau, and below which are the famed Salmona Springs, over which the State Government has spent large funds on its development as a tourist spot. If the site for garbage is continued, there is every possibility that the water in the springs may get polluted. We have noted that Calangute Village Panchayat levies a Garbage Tax, thereby creating a financial source. Once the Solid Waste Plant in North Goa is set up the present site is to be reverted to the Forest Department, as earlier it was under social forestry, so as to rehabilitate and restore it into its original State.”

3. It is further the case of the Petitioners that the Respondents have proposed a solid waste processing facility/garbage treatment plant to be set up in the said plateau surveyed under no. 112/1 of Saligao and surveyed under no. 47/1 of Village Calangute which is a garbage dumping site referred to in the proceedings before this Court in the said Writ Petition. It is further the case of the Petitioners that in breach of directions, the Respondents instead of reverting the land to the Forest Department under the social forestry are installing the Garbage Treatment Plant.

4. The Respondents filed their reply disputing the said contentions. It has been stated at Para 4 of the said affidavit, inter alia, that there are directions by the Hon'ble Supreme Court to all local authorities for enforcement of the MSW Rules. It has also been stated that in the Suo Motu Writ Petition No. 2 of 2007 vide Order dated 13.08.2008, there are directions to the State Government pursuant to the statement made therein on behalf of the State of Goa to have two garbage disposable sites one in North Goa and the other in South Goa in addition to

Bainguinim. It is also their case that pursuant thereto in order to set up the Solid Waste Management Plan, the area was identified by the TASK Force which is an expert Committee which decided that the said area is an appropriate site as Garbage Management Site. It is also their case that pursuant to the recommendations of the Committee in 2008, the Regional Plan indicated the said site as Garbage Management Site. It was also pointed out that one of the members of the Petitioners Organisation was also a Member of the TASK Force which identified the said site. It further states that once the land has been acquired by the State Government in terms of the Land Acquisition Act, such land stands vested in the State Government and stands realised from any encumbrances. It has also been stated that the EIA study which was conducted through NEERI, Nagpur, has clearly recommended the degraded site as an appropriate and suitable site and discarded any other site. The affidavit further states that in Writ Petition no. 28 of 2003, there is no direction or injunction against the State Government which restrains it from setting up the Garbage Management Disposal Plant at such site. There are only observations to the Village Panchayat of Calangute and Comunidade of Calangute to handover the site to the Forest Department. It has also been stated that the State Government is doing eco friendly project which includes Recreational facilities, parking, garden, green area, landscaping, etc. The affidavit further points out that the above Contempt Petition is a frivolous Petition and only an attempt by the Petitioners to obtain the stay of the project in the Village of Saligao bearing survey no. 47/1 by suppressing the fact that the very same Petitioners had approached the Hon'ble National Green Tribunal, Pune, by filing an Appeal with respect of the very same subject matter and no interim relief was granted by the learned Tribunal. It is further pointed out that

Hon'ble Supreme Court has taken a serious view of non-implementation of the Municipal Solid Waste Management Rules 2000 and the said stand has been reiterated by the learned National Green Tribunal at New Delhi. Disputing that the Respondents have committed any contempt, the Respondents submitted that the above Contempt Petition be dismissed.

5. An affidavit in rejoinder and sur-rejoinder was also been filed by the Petitioners and the Respondents disputing all the contentions raised in the affidavit in reply.

6. Mr. Nigel Da Costa Frias, learned Counsel appearing for the Petitioners, has pointed out that in view of the said observations referred to herein above, in the Judgment passed by this Court, the Respondents were not justified to proceed to set up the garbage waste management plant in the subject property which was directed to be handed over to the Forest Department for social forestry. Learned Counsel has further taken us through the observations in the said Judgment to point out that such activities by the Respondents without seeking any review of the earlier Order based on the alleged subsequent facts would not justify the Respondents to proceed with such activities which are in contempt of the directions of this Court. The learned Counsel as such submits that the Respondents be directed to comply with the said observations forthwith and stop the activities intended by the Respondents.

7. On the other hand, Shri Nadkarni, learned Advocate General appearing for the Respondents submit that in view of the subsequent events and

after examining the situations by the TASK Force, the subject site was found to be more suitable to put up a garbage disposable plant in such property. Learned Advocate General further pointed out that the Respondents have not committed any breach to the directions of this Court and, in any event, an additional affidavit has been filed tendering an unconditional apology with that regard. Learned Advocate General as such submits that considering the subsequent events which necessitated the action being taken by the Respondents, there is no willful disobedience of the directions of this Court. Learned Advocate General further pointed out that in the meanwhile the Calangute Panchayat was permitted to use the said subject site as a dumping ground for garbage until a permanent site was located for North Goa and, as such, the situation at loco was very bad and by putting up the new plant and constructing a garden, parking sites and other recreational activities, the area in the vicinity would be more habitable and stop the dumping of the garbage.

8. We have duly considered the arguments of the learned Counsel and we have also gone through the records. No doubt, in the observations of this Court in the Judgment dated 30.07.2003, there is a direction to the effect that the subject land would be restored as a social forestry and for this purpose, the concerned authorities were directed to handover such land to the Forest Department to comply with such scheme, but, however, there were subsequent events which disclose that the subject land was identified by the Task Force where even a member of the Petitioner was a party and the land was apparently acquired in terms of the Land Acquisition Act which was earmarked in the Regional Plan for such purpose. The subsequent events as enumerated in the affidavit would give a fresh cause of

action to the Petitioners to challenge the actions by the Respondents if they are so entitled in accordance with law. The Respondents have also filed an additional affidavit, inter alia, stating at Para 3 thus :

“I state that as sated herein above, I state this Respondent has highest regard and respect to the Orders passed by this Hon'ble Court which are binding upon this Respondent. I state that for any reasons, if this Hon'ble Court comes to the conclusion that action taken herein amounts to contempt by this Respondent, then this Respondent in anticipation would and hereby tender unconditional and sincere apology for the same and ensure that there will always be strict compliance and adherence of the Orders passed by this Hon'ble Court although it is most respectfully submitted that no contempt/breach of any nature has been committed by this Respondent. I state that the State Government has taken steps for taking up the project of Solid waste management facility in Survey No. 47/1 of village Calangute in compliance and assurance given by the State Government in suo motu Writ Petition 02/2007 and the same is of utmost importance and since the said site is a degraded site it requires urgent remediation to restore the same in larger public interest. I state that the said plant has been set up upon the consideration of the very sorry and pathetic state of affairs with respect to garbage disposal during the period from 2006 to March 2012 in this State and the action of the State Government to set up solid waste management facility is a bonafide step and the said plant has been set up in larger public interest. I state that by setting up of the said plant, the officers

of the State will not be benefited out of the same project but it is a project which is environmental protective measure. I state that therefore, there is no willful disobedience and contempt of Court committed by this Respondent. “

9. Taking note of the said statements made in the affidavit and there is no material to show that the Respondents have willfully committed a disobedience of any specific directions issued by this Court, we find that there is no case made out for initiating contempt proceedings against the Respondents. However, we accept the apology of the Respondents in the affidavit as we find that in view of the subsequent events as stated by the Respondents in the affidavit the above Petition does not deserve any consideration as it appears to be a sequitur to obtain an interim stoppage of the construction activity at the subject site.

10. It is to be noted that it is not the right of a party to invoke the contempt jurisdiction merely to redress the grievances as an application for contempt is not a mode by which rights of a party can be enforced against another. The jurisdiction of contempt is really a matter of concern for the administration of justice to maintain the dignity and authority of judicial Tribunals. In the present case, as already pointed out herein above, there were subsequent events which would disclose that the Respondents had to act on the basis of the directions issued by the Apex Court to put up a garbage treatment plants. As such, it cannot be assumed that there was willful disobedience of the Orders passed by this Court. Apart from that, it is trite law that if a subsequent cause of action arises in the matter of implementation of a Judgment, a fresh Writ Petition can be filed if a fresh

cause of action has arisen in accordance with law.

11. For the aforesaid reasons, the Contempt Petition stands accordingly disposed of. However, it is expected that in future, the Respondents should take necessary measures in law before proceedings to carry out any action based on subsequent events.

K. L. WADANE, J.

F. M. REIS, J.

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