

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

Con.Case(C).No. 984 of 2015 (S) IN WP(C).35098/2014

AGAINST THE JUDGMENT IN WP(C) 35098/2014 of HIGH COURT OF KERALA
DATED 04-03-2015

PETITIONER/3RD RESPONDENT IN THE W.P(C): -

ANEESH N.S., AGED 32 YEARS,
S/O.NELSON, S.N.BHAVAN, AMARAVILA,
VENGANOOR.P.O, THIRUVANANTHAPURAM-695523.

BY ADV.SRI.R.GOPAN

RESPONDENT/2ND RESPONDENT IN THE W.P(C): -

MR. PREM,, AGED ABOUT 45 YEARS,
FATHER'S NAME NOT KNOWN TO THE PETITIONER,
NOW WORKING AS THE SECRETARY,
VENGANOOR GRAMA PANCHAYATH, VENGANOOR,
THIRUVANANTHAPURAM.

BY ADV.SRI.POOVAPPALLY M.RAMACHANDRAN NAIR

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR
ADMISSION ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES :

- ANNEXURE A : CERTIFIED COPY OF THE JUDGMENT DATED 4.3.2015 IN W.P. (C) No. 35098/2014 OF THIS HONOURABLE COURT.
- ANNEXURE B : COPY OF JUDGMENT DATED 28.5.2015 IN W.A. No. 829/2015 OF THIS HONOURABLE COURT.
- ANNEXURE C : COPY OF THE DECISION ISSUED BY THE RESPONDENT PANCHAYAT DATED 23.5.2015.
- ANNEXURE D : TRUE ENGLISH TRANSLATION OF ANNEXURE C.
- ANNEXURE E : COPY OF THE ORDER DATED 15.6.2015 IN I.A. No. 1257/2015 IN APPEAL No. 561/2015 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

RESPONDENT'S ANNEXURES : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

Cont. Case (c) No. 984 of 2015

Dated this the 27th day of July, 2015

JUDGMENT

One Mr. Binukumar, the petitioner in W.P. (C) No.35098/2014 (referred to as 'the writ petitioner), established a Pig-farm without a valid licence, nine years ago. When he applied for the licence, it was rejected by the Secretary of the Grama Panchayat; later, on appeal, it was confirmed by the Executive Committee of the Grama Panchayat.

2. When the writ petitioner took the matter in revision before the Tribunal for Local Self Government Institutions, Thiruvananthapuram ('the Tribunal'), the petitioner in the present Contempt Case got himself impleaded as a respondent. Eventually, the learned Tribunal dismissed the revision through an order dated 08.12.2014.

3. As can be seen from the record, the writ petitioner filed W.P. (C) No. 35098/2014, out of which the present Contempt Case has arisen. This Court dismissed the writ petition with the following observation:

“16. Nevertheless, considering the submission made by the learned counsel for the petitioner that the petitioner requires some breathing time to shift his pig farm, this Court is of the opinion that the petitioner shall be given a month's time from the date of receipt of a copy of this judgment to vacate the pig farm.

17. It is further made clear that while either the first respondent or the additional sixth respondent considers the petitioner's application concerning licence or NOC, as the case may be, the observations made in the present writ petition simply for the purpose of disposing of the writ petition shall not be treated as an expression on merits. In other words, the authorities are required to consider the petitioner's applications independently and strictly in terms of the statutory requirements.”

4. Aggrieved, the writ petitioner carried the matter in W.A. No. 829/2015, which was dismissed by a learned Division Bench of this Court through Annexure B, observing

thus:

"3. Appellant's case is that he has already submitted an application before the Pollution Control Board for NOC which was ultimately granted and the same was submitted before the Panchayath which is under consideration. Having considered the aforesaid facts, this Court also extended time to comply with the order passed by the Panchayath till 22.05.2015. Panchayath, after considering the application filed by the petitioner, took a unanimous decision not to issue pig farm licence to the petitioner alleging that it causes health hazard.

In view of the order passed by the Panchayath rejecting the application for licence, the order passed by the learned Single Judge has already exhausted. *There being no licence to the petitioner, he cannot be allowed to run the pig farm.* Hence we do not find any merit in the appeal. The writ appeal is dismissed. The dismissal of the writ appeal, however, shall not preclude the appellant to challenge the order of the Panchayath, in accordance with law."

(emphasis added)

5. It is brought to the notice of this Court that, while the Writ Appeal was pending, the writ petitioner filed another application on 23.05.2015 before the Grama

Panchayat for licence. Later, on its rejection, in the light of the observation of the learned Division Bench that the dismissal of the Writ Appeal, however, shall not preclude the appellant from challenging the order of the Panchayat, the writ petitioner has approached the Tribunal by filing Appeal/Revision Petition No.561/2015 and obtained Annexure E interim order to the following effect:

"In the result, the impugned decision is stayed till the disposal of the appeal."

6. Contending that Annexure E interim order does not have the effect of upsetting, much less subsuming, the judicial directive of this Court in Annexure A judgment, dated 04.03.2015, as has been confirmed by a learned Division Bench of this Court in Annexure B, the petitioner invoked the contempt jurisdiction of the Court against the Secretary of the Grama Panchayat, *eo nomine*, in the present contempt proceedings.

7. The learned counsel for the petitioner has contended that initially the Grama Panchayat has simply rejected the claim of the writ petitioner for a licence. As

such, suspending a negative order does not, at any rate, have the impact of interfering with the judicial directive of this Court in Annexure A and Annexure B judgments. He has also contended that even if there were to be any conflict, it is the judgment of this Court that would prevail.

8. The learned counsel for the alleged contemner, as well as the Grama Panchayat, has submitted that the Grama Panchayat has every intention of complying with the judicial directive of this Court, but for Annexure E interim order. He has also submitted that the Grama Panchayat has repeatedly rejected the request of the writ petitioner for a licence, keeping in view various factors including the health hazards the pig farm may cause in the locality.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondent and the Grama Panchayat, apart from perusing the record.

Contempt & Interim Directions:

10. Peculiar are the circumstances in the present Contempt case. The writ petitioner is not a party to the Contempt Case, for the obvious reason that the alleged violation is on the part of an official of the Grama

Panchayat. This Court is also conscious of the procedural limitations it faces while dealing with Contempt Cases, because there can be no interim directions of mandatory nature in Contempt proceedings. Contempt cases are not, after all, execution proceedings. All that this Court either under Article 215 of Constitution of India or under Section 12 of the Contempt of Courts Act can do is to examine whether there is any contempt, more particularly, a willful contempt, and if there is, it has to invoke the penal provisions. Enforcement of an order is not part of contempt jurisdiction.

Contempt & Necessary Parties:

11. At this juncture, it is pertinent to observe that when this Court has put a specific query to the learned counsel for the petitioner why the petitioner does not go before the learned Tribunal, which issued Annexure E interim direction, and seek a clarification concerning its impact, he would contend firstly that the petitioner is not a party before the Tribunal, though he ought to have been made a party, for all along he has been fighting the case against the writ petitioner. Secondly, the writ petitioner has

been running the pig farm for the past nine years, despite lack of licence. According to him, at this juncture driving the petitioner to get himself impleaded and re-agitate the issue does not serve the cause of justice.

12. I do feel that there is substance in the submission of the learned counsel for the petitioner. This Court, justifiably, does not intend to lay down a proposition of law that the prosecutor alone has the rules to be followed, but not the perpetrator. All along, the petitioner has been a thorn in the pig-farm owner's flesh, perhaps an appropriate simile. He has resolutely been prosecuting the issue before various fora, yet the writ petitioner has not made him a party in the subsequent proceedings he has taken before the Tribunal.

13. In the present instance, the petitioner has only complained that the Grama Panchyat ought to have acted pursuant to the judgment of this Court, for there is a specific direction to the Grama Panchayat to ensure the closure of the pig-farm. Under these circumstances, the writ petitioner, the owner of the pig-farm, could have been a proper party to the contempt proceedings, but not, to my

mind, a necessary party.

Judicial Orders: Horizontal and Vertical:

14. It is the contention of the learned counsel for the petitioner that Annexure E interim order of the learned Tribunal is a nullity, for it has been rendered by an inferior Tribunal, especially in the face of Annexure A & B judgments of this Court. It is, indeed, necessary to observe that when an order of a judicial forum is tested before the hierarchy of courts, the prevalence or the predominance of the order of a forum at higher echelons comes into picture. The order of higher forum at every echelon subsumes that of the lower forum, on the premise of merger. Thus, the predominance of one judicial order over another arises if the said order has the verticality. In fact, the question of any conflict between the order of a lower forum and that of the higher forum does not arise at all, because the order rendered at lower echelons, once challenged and examined on merits, loses its identity, rather its very existence; it gets merged, obliterated as it were, as per the doctrine of merger.

15. Viewed from another perspective, if a binding order or judgment has been rendered by a court at lower echelons, but subsequently one of the parties to the lis, without assailing the same, and by suppressing the said issue, obtains a contrary order in his favour admittedly at higher echelons, I am of the considered opinion that the order of the higher court does not simply abrogate the order of the lower court. Thus, once the orders are horizontal, it is the first order that subsists, until and unless that is set aside.

16. In the present instance, no such conflict arises. The learned Division Bench has specifically observed that the writ petitioner is at liberty to lay challenge against any adverse order to be passed by the Grama Panchayat. Indeed, an adverse order was passed and was challenged.

Order of Dismissal: Can it be stayed?

17. To appreciate the impact of Annexure E which simply pronounces that the impugned decision of the Grama Panchayat is stayed till the disposal of appeal, it is essential to examine Annexure D order of rejection, dt.23.05.2015 by the respondent Grama Panchayat, and it reads as

follows:

"As per the Order dated 04.03.2015 in W.P. (C) 35098/2014 of the Hon'ble High Court of Kerala; it is Ordered to close down the Pig Farm of Sri. P. Binukumar, B.S. Palace, Uchakkada, Venganoor P.O, Sisilipuram Ward - Venganoor Panchayat. Against the said Order, Sri. Binukumar filed W.A. No. 829/2015 before the Division Bench of the Hon'ble High Court of Kerala. Accordingly by Order dated 10.04.15 the Hon'ble Division Bench of Kerala High Court Ordered to take appropriate decision to the Pollution Control Board within two weeks about the pig farm of Sri. Binukumar. It is further noted that, if it is found necessary Panchayat also can take appropriate decision in this matter; since Sri. Binukumar applied for licence, with the consent of Pollution Control Board. The Panchayat Committee examined the licence application of Sri. Binukumar in detail along with the complaints of the public. It is decided unanimously by the Panchayat Committee not to issue licence to the pig farm, since it caused unhygienic, health hazards, highly polluted air, ill health, and other deceases to the public in the locality. Air is highly polluted. The matter is strongly opposed by the Ward Member Sri. Anilkumar."

18. A perusal of the above makes it manifestly clear that the application of the writ petitioner stood rejected,

one more time, by the Grama Panchayat. No positive direction has been issued and no consequences flow out of Annexure D order. It simply means that no pig-farm could be established. Its continuance being illegal without licence, there is, clearly, no relief sought for its continuance until the issue of licence is resolved.

19. Usually, there can be a judicial interdiction of an order by way of stay or suspension, if the order is capable of execution. To preserve status quo or to preserve the cause of the lis unimpaired, the Courts do issue ad-interim directions either based on the power conferred by the statute or even invoking the inherent powers.

20. Be that as it may, in the present instance once an application stands rejected, the writ petitioner either in the appeal or revision, in my considered view, could have filed an Interlocutory Application, subject to statutory provisions, seeking a positive direction not to be evicted until the appeal is disposed of. A mere stay of operation of a negative order is of no consequence.

Clarification:

21. It amounts to judicial impropriety, or at least

over-reach, if the validity Annexure E order is to be pronounced upon in unconnected proceedings. It is already observed that Annexure E interim order is not in conflict with or in derogation of either Annexure A or Annexure B judgment. It simply has no impact, for it stays an unenforceable order.

22. It, however, serves the interest of justice, if a clarification is given regarding the impact of Annexure E interim order of the learned Tribunal. Staying an order of dismissal does not result in conferring any positive right on the writ petitioner. In other words, Annexure E interim order may have temporarily eclipsed the order of rejection passed by the Grama Panchayat. In that event, essentially, the writ petitioner could have been placed in the position which he had occupied prior to the passing of the order by the Grama Panchayat. That means, he is found running the pig-farm without a valid licence. Nothing more, nothing less.

23. Under these circumstances, I am of the considered view that the Panchayat cannot be barred from acting further by Annexure E interim order, which does not have

the potential of nullifying - it has, in fact, not nullified - the judicial directive given in Anneuxre A or Annexure B.

Coda:

24. In strict legal terms, if at all there were any contempt committed by the respondent, it could be against Annexure B judgment of the learned Division Bench, because Annexure A judgment no longer exists in the eye of law. It got merged.

With the above observations, the Contempt case stands closed.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-