

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

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

Con.Case(C).No. 1433 of 2010 (S)

AGAINST THE ORDER IN WP(C) 33311/2010 DATED 02-11-2009
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PETITIONER/PETITIONER :

BRAN AYISHA, W/O.MAMMOOTTY HAJI,
AGED 47 YEARS, AKKARA HOUSE, KANDOTH (VIA)
VELLAMUNDA P.O., WYNAD DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.A.ARUNKUMAR

RESPONDENTS/RESPONDENTS :

1. SRI.N.PRASANTH, FATHER'S NAME AND
AGE NOT KNOWN TO THE PETITIONER, SUB COLLECTOR
MANANTHAVADY, WYNAD DISTRICT - 670 645.
2. SRI.SHIHABUDDIN, FATHER'S NAME AND
AGE NOT KNOWN TO THE PETITIONER, TAHSILDAR
MANANTHAVADY, WYNAD DISTRICT - 670 645.

R1 & R2 BY SR. GOVERNMENT PLEADER, SRI. P.I. DAVIS.

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

ANNEXURE AI : TRUE COPY OF THE FAX MESSAGE SENT BY THE COUNSEL
AT 2 P.M.

ANNEXURE AII : TRUE COPY OF THE INTERIM ORDER DATED 02.11.2010
IN W.P.(C) No.33311 OF 2010.

ANNEXURE AIII : TRUE COPY OF THE FAX MESSAGE DATED 03.11.2010 SENT BY
THE SENIOR GOVERNMENT PLEADER TO THE GOVERNMENT
AND OTHERS.

ANNEXURE AIV : TRUE COPY OF THE LETTER DATED 02.11.2010 SENT BY THE
1ST RESPONDENT TO THE ADVOCATE GENERAL.

RESPONDENTS EXHIBITS :

ANNEXURE 1 : TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN
MATHRUBHOOMI DAILY DATED 03.11.2010.

ANNEXURE 2 : TRUE COPY OF THE FAX MESSAGE WITH ENDORSEMENT
REGARDING THE RECEIPT OF THE SAME.

ANNEXURE 3 : TRUE COPY OF RELEVANT PORTION OF THE GD MAINTAINED
IN MANANTHAVADY POLICE STATION.

ANNEXURE 4 : TRUE COPY OF THE RELEVANT PAGES OF THE CALL MESSAGE
REGISTER.

ANNEXURE 5 : TRUE COPY OF THE ORDER DATED 04.11.2010.

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

Contempt Case (Civil) No. 1433 OF 2010

Dated this the 27th day of July, 2015

JUDGMENT

Shaffique, J.

This contempt case has been filed complaining non-compliance of the order dated 02.11.2009 passed in W.P. (C) No.33311 of 2010.

2. An interim order was sought for in the writ petition seeking stay of demolition of the building of the petitioner, pending disposal of the writ petition. Petitioner submits that the writ petition was moved at 1.45 p.m. and this Court had passed an interim stay for a period of two months. Immediately the Court had also given an oral direction to the Government Pleader concerned who appeared on behalf of the Government to intimate the order of stay granted by this Court to the authorities. Learned Government Pleader informed the Sub Collector's office, but no action was taken to stop the demolition. The demolition started by around 2.45 p.m. and continued till 4 p.m. In the mean time, learned counsel for the

petitioner had sent a fax message to the Sub Collector's office which is brought to the notice of the 1st respondent. That apart, the learned Government Pleader who appeared for the respondents also called the 1st respondent, but he did not act on the said instructions and did not stop the demolition of the building. However, only at 4 p.m. when the District Collector interfered in the matter at the instance of the Government Pleader that the demolition had been stopped. This action, according to the petitioner, on the part of Sub Collector as well as the Tahsildar amounts to willful disobedience of the direction of this Court and hence sought for taking action for willful contempt.

3. Learned counsel for the petitioner relies upon Annexure AIII fax message issued by learned Government Pleader to the Principal Secretary to Government and other officers of the Government narrating the aforesaid incident. It has been stated therein that though he had informed the Sub Collector's office to stop the demolition activities, on account of

the interim stay granted by this Court, no action has been taken in the matter. It is also stated that when he contacted the Sub Collector personally, he did not take any care of it and justified his action. Learned Government Pleader therefore informed the District Collector for proper compliance of the High Court order.

4. Learned counsel for the petitioner also relies upon Annexure AIV, a letter sent from the Sub Collector's office to the Advocate General's office, wherein he had stated that he was receiving several calls from various persons alleging to be the Government Pleader of High Court stating that there was a stay in the demolition of the building. He asked for the fax message of the order but no such material was produced. One of the telephone numbers was detected to be of a local merchant in the town. He received a call from Adv. Narayanan and thus it was confirmed that there was a stay. Further he states that at about 3.30 p.m. the petitioner produced a copy of fax message from the counsel stating that demolition had been stopped by High Court. After making enquiries from the Collector and the

police authorities in good faith, the demolition which was almost completed was stopped.

5. Learned counsel for the petitioner submits that it is admitted by the Sub Collector that he has received message from Advocate General's office that there was stay. Instead of immediately stopping the demolition, he proceeded with the demolition till 4 p.m. and only after getting instructions from the District Collector, he had stopped the demolition activities.

6. Affidavit and additional affidavit have been filed by 1st respondent refuting the aforesaid allegations. According to him, though the order of stay was passed, the same was not communicated to him at the relevant time and as soon as the direction from the District Collector is received, the demolition has been stopped. According to him, he has not committed any willful contempt as alleged in the contempt case.

7. Having heard learned counsel for the petitioner and having perused the records, we do not think that willful contempt has been made out. Even though it is stated that the

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information was given to the 1st respondent immediately at 2.15 p.m. by the Government Pleader, the letter issued by Government Pleader indicates that the information was given to the office of the Sub Collector. There is no material to indicate that the Sub Collector was intimated at a time prior to 3.57 p.m. According to the 1st respondent, he received a call at about 3.57 p.m. while he was in Priyadarshini Tea Estate and that too a missed call and when he called back in the same number, the said call was attended by Adv. Narayanan. It is at that time alone he received the information about the stay order and accordingly he contacted the District Collector and Tahsildar was directed to stop the demolition at 4 p.m.

Having regard to the above factual situation, we have to consider whether there is any willful contempt on the part of the respondents. We do not think that the situation as narrated above warrants an action for willful contempt. The moment the first respondent received the information from District Collector, he stopped the demolition. Under such circumstances, we do not

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think that in the interest of justice there is any necessity proceed with the contempt case. Accordingly, the Contempt Case is closed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

ttb/27/07