

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

Con.Case(C).No. 483 of 2014 (S)

AGAINST THE JUDGMENT IN WP(C) 13065/2009 DATED 15-07-2013

PETITIONER :

**M.V.JOSEPH, AGED 57
S/O. VARKEY, MARIPURATH HOUSE, S.N.JUNCTION
KATTAPPANA, RESIDING AT MARIPURATH HOUSE, PARAKKADAVU
KATTAPPANA, IDUKKI DISTRICT.**

BY ADV. SRI.VARGHESE C. KURIAKOSE

RESPONDENTS :

- 1. SHRI. P. JOY OMMEN
CHAIRMAN AND MANAGING DIRECTOR
KERALA FINANCIAL CORPORATION, HEAD OFFICE
VELLAYAMBALAM, TRIVANDRUM-695 001.**
- 2. SMT. ANNAMMA K.P., AGED ABOUT 50,
FATHER'S NAME NOT KNOWN TO THE PETITIONER
WORKING AS BRANCH MANAGER
KERALA FINANCIAL CORPORATION, KATTAPPANA
IDUKKI DISTRICT-685 515.**
- 3. SHRI. JOSEPH DEVASSYA @ LAL, AGED 49,
S/O. DEVASSYA, KUNNUMPURATH HOUSE, KATTAPPANA KARA
KATTAPPANA VILLAGE, UDUMPANCHOLA TALUK
IDUKKI DISTRICT-685 515.**

**R1 & R2 BY SENIOR ADVOCATE SRI.K.JAJU BABU
BY ADVS. SMT.M.U.VIJAYALAKSHMI, SC
SRI.T.V.GEORGE, SC**

**R3 BY ADVS. SRI.REJI GEORGE
SRI.BINOY DAVIS**

**THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-03-2015, THE COURT ON 10-04-2015 DELIVERED THE
FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE 1	: COPY OF THE JUDGMENT IN WP(C) NO. 13065/2009 PASSED BY THIS HONOURABLE COURT.
ANNEXURE IN IA NO. 378/2014	PHOTOSTAT COPY OF NOTICE DATED 28.8.2014 ISSUED BY KERALA FINANCIAL CORPORATION TO THE PETITIONER.
ANNEXURE 2	COPY OF THE COMMON JUDGMENT IN WA NO. 1420/2013 AND 1619/2013 PASSED BY THIS HONOURABLE COURT.
ANNEXURE 3	COPY OF THE REQUEST LETTER DATED 21.4.2014 TO THE RESPONDENTS.
ANNEXURE 4	COPY OF THE ADKNOWLEDGMENT CARD SIGNED BY THE 1ST RESPONDENT ON 23.4.2014.
ANNEXURE 5	COPY OF THE ACKNOWLEDGMENT CARD SIGNED BY THE 2ND RESPONDENT ON 25.4.2014.
ANNEXURE 6	COPY OF THE ACKNOWLEDGMENT CARD SIGNED BY THE 3RD RESPONDENT ON 25.3.2014.
ANNEXURE 7	COPY OF THE REPLY DATED 2.5.2014 ISSUED BY THE CHIEF MANAGER.
ANNEXURE 1 IN REPLY AFFIDAVIT	COPY OF THE STATEMENT DATED 22.9.2009.
ANNEXURE 2 IN REPLY AFFIDAVIT	COPY OF THE PROCEEDINGS OF THE KATTAPPANA GRAMAPANCHAYAT REGARDING CONSTRUCTIN OF BUILDING.
ANNEXURE 3 IN REPLY AFFIDAVIT	COPY OF THE COMPLETION CERTIFICATE DATED 28.3.98.

(Contd...)

ANNEXURE 4 IN REPLY AFFIDAVIT	COPY OF THE RETURN SUBMITTED BY THE PETITIONER TO THE LOCAL AUTHORITY UNDER RULE 5 OF THE KERALA PANCHAYAT BUILDING RULES.
ANNEXURE 5 IN REPLY AFFIDAVIT	COPY OF THE SKETCHES PERTAINING TO THE PROPERTY OF THE PETITIONER MEASURED OUT BY THE VILLAGE OFFICER.
ANNEXURE 6 IN REPLY AFFIDAVIT	COPY OF THE SKETCHES PERTAINING TO THE PROPERTY OF CLARAMMA JOSEPH MEASURED OUT BY THE VILLAGE OFFICER.
ANNEXURE 7 IN REPLY AFFIDAVIT	COPY OF THE COMMUNICATION DATED 3.2.2011.

RESPONDENT'S ANNEXURES :

ANNEXURE R1(a)	: COPY OF THE LETTER NO. 040195210/800/14 DATED 9.7.2014 ISSUED BY THE KFC TO THE 3RD RESPONDENT.
ANNEXURE R1(b)	COPY OF THE LETTER NO. 040195210/799/14 DATED 9.7.2014 SUBMITTED BY THE KFC TO THE DISTRICT COLLECTOR.
ANNEXURE R1(c)	COPY OF THE LETTER NO. 040195210/801/14 DATED 9.7.2014 SUBMITTED BY THE KFC TO THE TAHSILDAR.
ANNEXURE R1(d)	COPY OF THE SURVEY SKETCH HANDED OVER TO THE CORPORATION ON 8.8.2014.
ANNEXURE R1(e)	COPY OF THE LETTER NO. 040195210/936/14 DATED 23.8.2014 ISSUED BY THE CHIEF MANAGER TO THE VILLAGE OFFICER.
ANNEXURE R1(f)	COPY OF THE TAX RECEIPT NO. 4576458 DATED 28.8.2014 ISSUED BY THE VILLAGE OFFICER.
ANNEXURE R1(g)	COPY OF THE NOTICE NO. 040195210/992/14 DATED 28.8.2014 RECEIVED AND ACKNOWLEDGED BY THE PETITIONER.

(Contd...)

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**ANNEXURE R1(h) COPY OF THE NOTICE NO. 040195210/999/14 DATED 29.8.2014
ISSUED BY THE CHIEF MANAGER TO THE VILLAGE OFFICER.**

**ANNEXURE R1(i) COPY OF THE JOINT REPORT DATED 3.9.2014 OF
K.R. ARAVINDAN, THE PRESENT CHIEF MANAGER,
KATTAPPANA BRANCH, MANAGER (LEGAL), DEPUTY
MANAGER, VILLAGE OFFICER, FILED ASSISTANT ETC.**

**ANNEXURE R1(j) COPY OF THE OBJECTION DATED 3.9.2014 SUBMITTED BY THE
PETITIONER TO THE CHIEF MANAGER.**

//TRUE COPY//

P.A. TO JUDGE

Mn

A.M.SHAFIQUE, J

Cont.Case No.483 of 2014

Dated this the 10th day of April 2015

J U D G M E N T

This contempt case has been filed alleging improper compliance of the directions issued by this Court as per judgment dated 15/07/2013 in WPC No.13065/2009. The directions issued by this Court as narrated in paragraph 23 (iii) of the judgment reads as under:

“23. (i) xxxx

(ii) xxxx

(iii) *W.P.C.No.13065 of 2009 is allowed as under;*

(a) The respondents are directed to surrender possession of 15 cents of land in Sy.No.67/1/2 in favour of the petitioner after identifying the property with the help of the Taluk Surveyor on the basis of the documents produced as Ext.R3(a), (b) and (c). This may be done within a period of three months from the date of receipt of a copy of this judgment.

b) It shall be open for the auction purchaser to approach KFC to make necessary corrections in the sale deed executed in his favour and for refund of the proportionate purchase price.

c) Restoration of possession of the property in favour of the petitioner shall not preclude KFC from initiating any other proceedings in accordance with law for recovering any amount payable by the petitioner as a guarantor, in accordance with the procedure prescribed."

2. The complaint of the petitioner is that though the respondents were directed to surrender possession of 15 cents of land in Sy.No.67/1/2 in favour of the petitioner after identifying the property with the help of Taluk Surveyor on the basis of documents produced as Exts.R3(a), (b) and (c), The Taluk Surveyor has taken a method of measurement by which the building of the petitioner is not surrendered. According to the petitioner, the property having an extent of 15 cents and residential building bearing door No.KP 5/284

was mortgaged in favour of the Kerala Financial Corporation. Therefore, they were bound to surrender that portion of property having an extent of 15 cents including the residential building. Therefore, according to the petitioner, when only certain item of land is demarcated and surrendered back indicates wilful contempt.

3. Counter affidavit is filed by the 1st respondent inter alia contending that they have not committed any contempt. Immediately on receiving information from the Counsel for KFC regarding dismissal of Special Leave Petition filed by them, steps were taken to comply with the direction by issuing Annexures R1(a), R1(b) and R1(c) letters addressed to the District Collector and Tahsildar to survey the property having an extent of 15 cents as per the sale deeds aforementioned. On 18/09/2014, petitioner filed an application seeking a direction to respondents 1 and 2 to restore possession of the building to the petitioner. It is inter alia stated that petitioner was served with Annexure 1

letter dated 28/08/2014 offering restoration of possession of 6.05 ares (15 cents) and he was called upon to take possession. Petitioner contended that the building was not situated in the said 15 cents.

4. An additional affidavit is filed by the 1st respondent stating that the Taluk Surveyor, Udumpanchola after measurement, prepared a sketch on 22/07/2014, based on which Village Officer was directed to restore the property in favour of the petitioner and to make necessary correction in the revenue records. Accordingly, the property was restored by the Village Officer to the petitioner. However, the petitioner did not come to take possession though the officers waited at the site until 11.30 a.m on 03/09/2014. Petitioner objected to the measurement by submitting Ext.R1(j). It is stated that 15 cents of property was identified and demarcated by the Taluk Surveyor as per Annexure R1 (d) report which was offered to the petitioner and he has refused to take possession. Hence it is submitted that the

respondents have not violated any of the directions issued by this Court.

5. Petitioner filed a reply affidavit producing additional documents wherein petitioner relies upon Annexure 1 statement filed on behalf of respondents 1 and 2 indicating that “the security among other things includes 15.75 Ares (39 cents) of land in Sy.No.67/1/2 of Kattappana village owned by Smt.Claramma Joseph and 6.05 Ares (15 cents) of land in Sy.No.67/1-2 of Kattappana Village together with residential building thereon owned by the co-obligant Sri.M.V.Joseph.” On this premise, it is contended that when it is admitted that the mortgage was created in respect of the residential building by the petitioner along with 6.05 Ares of land, the measurement ought to have been taken including the residential building. Petitioner also produced Annexure V showing the location map of land owned by the petitioner. An affidavit is filed in I.A.No.422/2014 seeking to appoint an Advocate Commissioner to measure out the said

land on the basis of the sketch handed over by the petitioner to KFC.

6. Third respondent has filed a counter affidavit stating that the judgment of this Court was not challenged by the petitioner wherein directions have been issued to surrender possession of the land after taking measurements in terms of the sale deeds. Therefore, when there is no direction issued by this Court to give the building, the petitioner is not entitled for the same. At any rate, there is no wilful contempt, as alleged. They have filed counter affidavit in I.A.No.422/2013 raising the very same contentions and reiterating the fact that this Court cannot go beyond the finding of fact in the judgment.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents. It is pointed out by the learned counsel for the petitioner that officials of KFC had all along contended that the land and building in was mortgaged by the petitioner and when there was a direction

to surrender the said land as per the sale deeds which was given as deposit of title deeds, it virtually amounts to a direction to surrender back the building as well as there is no specific direction required in the matter. But it is relevant to note that there was some issue relating to the existence of a building in the property mortgaged by the petitioner. The 3rd respondent in the writ petition filed a counter affidavit stating that the aforesaid 15 cents of land along with other properties having an extent of 39 cents was purchased by the 3rd respondent as a single plot and no demarcation was done within the said two items of property. They have taken a contention that when the 15 cents is identified on the basis of the documents, it was clear that the residential building was not situated in the said 15 cents of property. Taking into consideration the disputed facts, I have held in paragraphs 21 and 22 as under:

“21. As far as the auction purchaser is concerned he has purchased the property as a single plot covered by a single sale deed. When

the very invocation of Section 29 of the SFC Act is bad in law as far as the property covered by two sale deeds are concerned, the said items of property has to be properly demarcated and returned to the petitioner. There is dispute between the parties as to whether the property having the extent of 15 cents includes the building also. The petitioner has produced some documents to prove that he has constructed the building. But it is also noticed that the building was reconstructed. The materials on record especially the sale deeds will give a picture that the 10 cents covered by Ext.R3(b) sale deed is on the south western end of the 55 cents. The side measurements are not shown in the sale deed whereas it is stated to be in the south western end. If it had covered the full western end the same would have been specifically mentioned. The 5 cents covered by Ext.R3(c) is on the immediate east of what is granted under Ext.R3 (b). This however is a matter to be verified by the parties concerned with the help of a Taluk surveyor since there is dispute regarding identity of the property. As far as auction purchaser is

concerned, he has purchased the entire 55 cents with building thereon. Now, by virtue of the present declaration of law by Supreme Court and the consequences thereon, 15 cents has to be restored back to the petitioner, of course, without prejudice to the right of the KFC for attaching the property in accordance with the procedure prescribed.

22. Taking into consideration the disputes between the parties though it is argued by the learned counsel that the parties are to be relegated to the civil court to identify the property I do not think that such a course is required as the property could as well be measured and identified as per the sale deed itself.”

8. It is in the said background that direction was issued to the respondents to identify the property through a Taluk Surveyor. Learned counsel for the 3rd respondent relied upon judgment of the Supreme Court in **Director of Education, Uttaranchal and others v. Ved Prakash Joshi and others** [(2005) 6 SCC 98] and **Union of India and others v. Subedar Devassy PV** [(2006) 1 SCC 613].

It is held that a review of the decision in the contempt proceedings is impossible and the contempt court is only concerned with the question whether the decision has been complied with or not. It cannot test the correctness or otherwise of the order and take a different view from what has been taken therein or give any additional directions or delete any directions.

9. The position of law in this regard is well settled as already held by the Supreme Court in its judgment cited above. This Court cannot issue any further direction, whereas the issues involved is whether this Court meant that the building also should be allotted to the petitioner. But, looking at the judgment, it is clear that there was an issue relating to the question that whether the building was situated in the land belonging to the petitioner or not. It is in that background, that this Court directed the property to be measured by the Taluk Surveyor. Once the measurement had been effected by the Taluk Surveyor and the property

has been identified, as rightly contended by the respondents, this Court cannot come to a finding that the respondents have committed wilful contempt. If the petitioner has a contention that measurement done by the Taluk Surveyor is incorrect or improper, it is always open for the petitioner to challenge the said survey in an appropriate forum. It may not be possible for this Court exercising jurisdiction in finding out whether prima facie contempt is committed or not, to issue further directions or to depute an Advocate Commissioner to re-survey the land through the Taluk Surveyor.

Under such circumstances, I am of the prima facie view that no wilful contempt has been committed by the respondents and accordingly this contempt case is closed.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

