

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

Contempt Case No.1209 of 2014

ORDER:

Heard Sri P.Rajasekhar, learned counsel for the petitioner, learned Government Pleader for Arbitration for 1st respondent and Sri A.Srikanth Reddy, learned counsel for 2nd respondent.

2. This Contempt Case is filed alleging that the Order dt.26-08-2013 in C.M.A.M.P.No.1508 of 2013 in C.M.A.No.675 of 2013 was violated wilfully by respondents.

3. The facts leading to the filing of this Contempt Case are as follows:

O.A.No.815 of 2010 was filed by the respondent Nos.1 and 2 herein against the petitioner under Section 83 of the AP Charitable Hindu Religious Institutions and Endowments Act, 1987 alleging that the petitioner herein is an encroacher of an extent of Ac.5.04 cts of wet land in Sy. No.615/1 & 2 belonging to Sri Sadhu Annasatram, K.M.Pally village, B.Matham Mandal, Kadapa District and for his eviction.

4. The petitioner contested the same.

5. By Order dt.22-04-2013, the said O.A. was allowed directing the eviction of the petitioner.

6. The petitioner questioned it in C.M.A.No.675 of 2013 before this Court.

7. On 26-08-2013, C.M.A. was admitted and in C.M.A.M.P.No.1508 of 2013, interim stay of all further proceedings including eviction pursuant to the Order dt.22-04-2013 in

O.A.No.815 of 2010 of the AP Endowment Tribunal at Hyderabad pending disposal of the C.M.A. was passed. A copy of the said order was marked to respondent Nos.2 and 3 by RPAD and also dispatched by the Registry on 05-09-2013 to them.

8. The petitioner filed this Contempt Case alleging that 2nd respondent issued a Notification dt.26-06-2014 proposing to conduct auction leasehold rights of subject land on 30-06-2014 and that he approached the respondents and requested them not to proceed with the auction since he is in possession and enjoyment of the land and requested them to obey the orders of this Court. It appears that the auction on that day was postponed. But the petitioner asserted that the respondents are intending to conduct auction of the leasehold rights although the land is in his possession and enjoyment, and the conduct of auction would amount to violation of the orders of this Court.

9. Counter affidavit was filed by 1st respondent in the Contempt Case stating that 1st respondent had not received any notice either from this Court or from the counsel for the petitioner. 1st respondent also denied that he received copy of the interim order dt.26-08-2013 in C.M.A.M.P.No.1508 of 2013 by RPAD. He contended that after the orders were passed by the Tribunal, 1st respondent decided to conduct auction of the leasehold rights of the land in question and had issued an auction notification proposing to conduct auction on 30-06-2014, that at that time, the petitioner had produced copy of this order passed by this Court, and therefore, the auction was stopped. He further reiterated that the petitioner is in illegal and unauthorized possession of the land belonging to 2nd respondent, that the petitioner had no right to

continue in possession of the property and he had no right and title over the property.

10. The 2nd respondent filed a separate counter stating that he did not receive the order dt.26-08-2013 in C.M.A.M.P.No.1508 of 2013 in C.M.A.No.675 of 2013 passed by this Court, staying all further proceedings pursuant to the Order passed by the Tribunal in O.A. He stated that his office could not function due to Seemandhra agitation at the relevant point of time. He alleged that 1st respondent, pursuant to Orders of the Endowment Tribunal conducted *panchanama* on 25-06-2014 taking over possession of land from petitioner; this was done in presence of village elders; and the Tahsildar, Chapadu Mandal, Village Revenue Officer, Chapadu village and the Sub Inspector of Police have attended at the time of conduct of *panchanama* and signed the *panchanama* in proof of handing over possession of the subject property to 2nd respondent on 25-06-2014.

11. It is pertinent to note that 1st respondent has not referred in his counter affidavit to this fact at all. The copy of the *panchanama* has been made available to this Court by 2nd respondent which indicates that 1st respondent has signed on *panchanama* on 25-06-2014. It is thus clear that 1st respondent had deliberately suppressed from this Court the fact that he had conducted the *panchanama* on 25-06-2014 and dispossessed the petitioner. Obviously this has been done to mislead the Court and to give an impression that the petitioner continues to be in possession of the property.

12. The petitioner filed a reply affidavit contending that

the interim order of the Court dt.26-08-2013 was dispatched to the respondent by the Registry of the High Court through RPAD; that the respondents did not dispute that the addresses of the respondents is incorrect and therefore, it has to be presumed that the interim order has been served on the respondents. It is further contended that the respondents cannot now take a plea that they have not received the said order. The petitioner also contended that he had applied for information under the Right to Information Act, 2005 to the District Collector, YSR Kadapa District in regard to the alleged *panchanama* which is said to have been conducted by 1st respondent, but the Tahsildar, Chapadu Mandal, on the direction of the District Collector, had informed the District Collector that he does not have information regarding *panchanama*.

13. Admittedly the interim order passed by this Court in C.M.A.M.P.No.1508 of 2013 on 26-08-2013 stayed the eviction of the petitioner from the subject land. This Order was dispatched by RPAD to the respondents. This fact was got verified from the Registry and it was informed that it was dispatched to both the respondents on 05-09-2013 but acknowledgment cards were not received back. There is a presumption under Section 27 of the General Clauses Act that service shall be deemed to be affected by properly addressing, pre paying and posting by registered post, a cover containing the Court order, unless the contrary is proved.

14. It is not the case of the respondents that the Registry had sent it to the wrong address or by not paying the requisite stamp. The defence of the respondents is that they did not receive the order copy because of the Seemandhra agitation. In para-10 of the counter of 2nd respondent, it is stated that "office could not

function due to the Seemandhra Agitation during the relevant point of time”. If the respondents had not attended their offices on account of the said agitation, they cannot be allowed to plead that they did not receive the order copy because by their own conduct, they disabled themselves from coming to know of it. They cannot be allowed to take advantage of their own wrong.

15. In any event, on the date when the *panchanama* was conducted i.e. 25-06-2014, the said agitation was not subsisting because by 02-06-2014 itself, the bifurcation of the erstwhile State of Andhra Pradesh into the State of Telangana and the residuary State of Andhra Pradesh, had occurred.

16. It is also pertinent to note that C.M.A.M.P.No.1039 of 2014 was filed to vacate the order dt.26-08-2013 passed in C.M.A.M.P.No.1508 of 2013 but the same was dismissed for default on 10-02-2015.

17. Therefore, this Court is of the opinion that when there is an order granting stay of eviction of the petitioner, the respondents acted willfully and deliberately in violating it and dispossessing the petitioner from the land under the *panchanama* 25-06-2014 and also attempting to conduct public auction of leasehold rights in the land by auction notification dt.26-06-2014 on 30-06-2014.

18. In this view of the matter, 1st respondent cannot be shown any indulgence for suppressing the *panchanama* dt.25-06-2014 which is signed by him evidencing delivery of possession to 2nd respondent and 2nd respondent cannot absolve himself by pleading that it was 1st respondent who delivered possession of the property to him. Both the respondents are presumed to be

having knowledge of the order and have therefore to be held to have committed Contempt of Court.

19. Having regard to the above findings, the respondents are held guilty of Contempt of Court and are sentenced to simple imprisonment for a period of three months along with fine of Rs.2,000/- (Rupees Two Thousand only) each. Before they served this sentence, respondents shall deliver possession of the property to the petitioner within three days of receipt of a copy of this order. The petitioner shall deposit subsistence allowance Rs.300/- (Rupees Three Hundred only) per day for each of the respondents for this duration of three months. This sentence is suspended for a period of two weeks from today enabling the respondents to avail the remedy of appeal.

20. With the above directions, the Contempt Case is allowed.

21. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 18-03-2015

Note:

Copy of this Order be furnished to the respondents within three days.

B/o.

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