

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CONTEMPT CASE NO.1770 of 2014

DATED:5-8-2015

Todeti Mallaiah

... Petitioner

And

B. Sammi Reddy

Tahasildar

Burghampahad Mandal

Burghampahad, Khammam District

and others

... Respondents

COUNSEL FOR THE PETITIONER: Mr. P. Vishnuvardhan Reddy

COUNSEL FOR THE RESPONDENTS: G.P. for Revenue (TS)

THE COURT MADE THE FOLLOWING:

ORDER:

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The petitioner in W.P. No.37639 of 2013 filed this contempt case alleging wilful disobedience of interim order dt.23.12.2013.

2. The facts in a nutshell are as under. Alleging unlawful interference with his possession of land admeasuring Ac.3.00 in Sy.No.263 of Tallagommuru Village, Burghampahad Mandal, Khammam District (for short, 'the subject land'), by the respondents, the petitioner filed W.P.No.37639 of 2013 before this Court. In the affidavit filed in support of the writ petition, it was averred that his father, late Venkateswarlu was the cultivator of the subject land, which is conceded to be a government land. That his father has occupied the said land in 1950 and his name was recorded in the revenue records, such as pahanies for the years 1963-64, 1969-70, 1971-72, 1978-79, and that after his father's death in the year 1982 he has succeeded to the subject land and he is in possession of the same. The petitioner further averred that on 25.11.2013 at about 8.30 a.m. respondent No.1 highhandedly started erecting fencing poles surrounding the petitioner's land without issuing any show cause notice and without initiating proceedings under the Andhra Pradesh Land Encroachment Act. On 23.12.2013 this Court passed the following order:

"Pending further orders, the respondents shall not dispossess the petitioners from the land admeasuring Acs.3.00 in Survey No.263 of Tallagommuru Village, Burghampahad Mandal, Khammam District."

3. Thereafter, a complete quietus ensued for nearly 11 months. In the affidavit filed in support of the contempt case, the petitioner alleged that on 15.10.2014 respondent Nos.1, 2 and 4 illegally entered the subject land and tried to demolish the temporary shed with JCB and that on the objection raised and resistance put up by the petitioner and the villagers, the said respondents have left the place with a warning

that they will come along with Police. The petitioner further averred that he has contacted his counsel and got legal notice dt.16.10.2014 issued through Registered Post, which was received by the aforementioned respondents on 18.10.2014. That despite receipt of the contempt notice, respondent Nos.1, 2 and 4 again came to the petitioner's land on 19.10.2014 with police force and that when the petitioner has shown the order of this Court to the Police, they left the place stating that they will not interfere with the Court's order while advising the respondents also not to destroy the trees and temporary shed. That without heeding to the advise of the Police, respondent Nos.1, 2 and 4 criminally trespassed into the land with JCB, demolished temporary shed and removed one year old eucalyptus plants.

4. In response to the notice of this Court, respondent Nos.1, 2 and 4 filed separate counter affidavits. In his counter affidavit, respondent No.1 has pleaded that in pursuance of the policy decision taken by the government to protect and safeguard the government lands situated in urban and semi-urban areas by fencing around the same, the District Collector directed all the Tahsildars in the District to protect the government lands by fencing around them, vide his proceedings dt.26.8.2013, that as per the directions of the Government and also of the District Collector, respondent No.1 has surveyed the lands on 3.11.2013 and identified the government lands in Sy. Nos.262 and 263 of Tallagommuru Village, Burghampahad Mandal, and requested respondent No.2 to sanction amount for laying fencing around the identified government lands, and that respondent No.3 in turn issued proceedings dt.21.11.2013 releasing a sum of Rs.1.00 lakh to meet the expenditure for fencing the government lands and issued demand draft dt.21.11.2013. That acknowledging the said sum of Rs.1.00 lakh, respondent No.1 has requested respondent No.3 to release the balance sum of Rs.81,575/- on 2.12.2013 and since then the land admeasuring Ac.6.20 guntas in Sy.No.263 was in the custody of the

Government and the Village Revenue Officer and the Mandal Revenue Inspector, Burghampahad, were directed to protect the property.

5. As regards the claim of the petitioner regarding his possession, respondent No.1 has denied the same. He has further averred that order dt.23.12.2013 of this Court was received by the office of respondent No.1 on 3.1.2014. He has also alleged that the petitioner has approached this Court with unclean hands by making a false claim that he has been in possession of the subject land, though he has never been in possession of the same. He has termed the pahanies, cist receipts, title deeds and pattadar pass books filed by the petitioner as forged and fabricated. He has further alleged that in violation of order dt.23.12.2013 and taking advantage of Saturdays, Sundays and Public Holidays, the petitioner damaged the barbed-wire fencing, trespassed into the government land, removed the signboard erected by the government and started construction with cement bricks by engaging labour and that immediately after noticing the same, respondent No.4 and Mandal Revenue Inspector resisted the action of the petitioner and removed all the material on the spot including the cement bricks wall and thereafter respondent No.1 has filed a vacate stay petition, being W.V.M.P.3487 of 2014 in the writ petition, and the same is pending. Respondent No.1 has referred to an earlier incident of the petitioner allegedly trying to destroy the fence around the government land and filing of the complaint by the Mandal Revenue Inspector and lodging Police report dt.15.1.2014.

6. Respondent No.1 while admitting receipt of legal notice, dt.16.10.2014, caused to him by the petitioner, on 18.10.2014, however stated that he has issued a suitable reply dt.22.10.2014 claiming that the government is in possession of the land and fencing work was also completed in all respects. He has also averred that on 16.10.2014 he has filed a Police report. Along with the counter affidavit, respondent No.1 has filed correspondence between himself

and respondent No.2 in support of his plea that barbed fence was erected. He has also filed photographs showing existence of barbed wire fence. The counter affidavit filed by respondent Nos.2 and 4 are also of similar tenor as that of respondent No.1.

7. I have heard Mr. P. Vishnu Vardhan Reddy, learned counsel for the petitioner, and the learned Government Pleader for Revenue (TS).

8. Before undertaking further discussion on the merits of the case, I would like to clarify that I do not intend to render any finding on the entitlement or otherwise of the petitioner to remain in possession of the subject property. The narrow scope of this contempt case is confined to whether the admitted action of respondent Nos.1, 2 and 4 constitutes wilful violation of the order of this Court.

9. The following facts are not in dispute. That the subject land is Government land. That this Court has granted interim order dt.23.12.2013 in W.P. No.37639 of 2013 restraining the respondents from dispossessing the petitioner from the subject land. That when the respondents have entered the land and tried to remove the structures the petitioner caused legal notice dt.16.10.2014 on the respondents, which was received by them on 18.10.2014 and that on 19.10.2014 they have removed the structures and the entire material lying on the subject land.

10. As noted above, the only defence of the respondents was that the petitioner was never in possession of the subject property as a fence was laid even before the petitioner filed the writ petition and secured an interim order. Let me assume for the present case that the petitioner was not in possession of the property when the writ petition was filed and he was making repeated attempts to enter the land. On this admitted fact situation, what should be the conduct of the respondents, needs to be discussed. When the petitioner has filed the writ petition allegedly based on false allegations and fabricated documents, the respondents are expected to approach this Court within a reasonable time by filing a counter seeking vacation of the

interim order. On their own showing till they have removed the structures and thrown away the material from the subject land they have not even filed a counter affidavit. When the petitioner has allegedly tried to enter the property in the guise of the interim order, being responsible public servants, the respondents are expected to at least issue a notice to the petitioner calling upon him to refrain from doing so. Far from issuing such notice, the respondents have not even responded to the contempt notice caused by the petitioner through his Lawyer on 16.10.2014 which was admittedly received by the respondents on 18.10.2014. Though respondent Nos.1 and 3 in their counter affidavits have claimed that they have replied to the legal notice dt.16.10.2014, neither proof of receipt of such reply by the petitioner has been adduced, nor at least a copy of the same has been filed by them along with the counter affidavits. Even if the respondents felt justified in trying to allegedly prevent the petitioner from entering the land by cutting the barbed wire fence and trying to erect the shed on 15.10.2014, at least after they have received the contempt notice on 18.10.2014 they ought to have refrained from causing further interference and obtained legal advice. The nonchalant conduct of respondent Nos.1, 2 and 4 is reflected from the fact that disregarding the interim order as well as the contempt notice, they have engaged a heavy equipment such as JCB and removed the shed which appeared to be partly constructed as evident from the photographs. Such conduct on the part of the respondents is highly deplorable, in the face of the order granted by this Court to the effect that they shall not dispossess the petitioner from the subject land.

11. The submission of the learned Government Pleader for Revenue that as the petitioner was never in possession of the subject land the question of his dispossession does not arise is wholly meritless. Assuming that the petitioner was not in physical possession of the property, when the respondents were directed not to dispossess the petitioner till a finding is rendered by this Court that he was not in

possession and the order is vacated, the petitioner is deemed to be in possession of the property. If the petitioner was not in physical possession of the subject land and trying to enter the land in the guise of the interim order, the only option left to the respondents was to file a counter affidavit seeking vacation of the interim order and evict the petitioner after getting the interim order vacated. In the guise of protecting the government land, the respondents cannot take law into their hands when the dispute is *sub judice* and an order directing them not to dispossess the petitioner was passed in unequivocal terms. By asserting that the petitioner was not in possession and acting based on such assertion, the respondents have usurped the role of the Court instead of seeking adjudication of the disputed question of possession by the Court. If such conduct of public servants is allowed to pass muster of this Court, there is every scope for judicial orders being violated with impunity based on the self-adjudication by the public servants regarding factum a person's possession of the property. If the acts of the public servants in forcibly entering the properties ignoring the orders of the Courts are condoned, there is a likelihood of their throwing out the persons who are in actual possession of the properties by raising a false plea that they were never in possession of the property and that they are trying to occupy the same in the guise of the order of the Court, as pleaded in this case. Such a situation must never be allowed to crop up as that would not only frustrate the judicial orders, but also undermine the authority of the Courts.

12. It is indeed intriguing that the respondents have slept over the case for almost one year without even filing a counter affidavit and raised a bogie of protecting the government property by interfering with the petitioner's right of being in possession conferred by the interim order of this Court. Such brazen violation of the judicial orders seriously damages the fabric of rule of law and brings down the majesty of the Courts. The respondents being public servants must jealously protect the dignity of the Court and follow and implement

judicial orders of the Courts in their letter and spirit. On the admitted facts, I have absolutely no doubt whatsoever in my mind that respondent Nos.1, 2 and 4 have brazenly violated the order of the Court in the guise of protecting the government land. Their act borders on a complete lack of respect, responsibility and accountability towards the judicial order passed by a Constitutional Court.

13. For the above reasons, I have no hesitation to hold that respondent Nos.1, 2 and 4 have deliberately and wilfully violated the order of this Court and they are accordingly held guilty of committing contempt of court.

14. As regards sentence, considering the facts and circumstances of the case, I feel that imposition of fine of Rs.1,000/- (Rupees one thousand only) on each of respondent Nos.1, 2 and 4 would meet the ends of justice. Ordered accordingly. Respondent Nos.1, 2 and 4 are allowed four weeks' time for paying the fine failing which they must suffer simple imprisonment for one week. The appointing authority shall enter the conviction and sentencing of respondent Nos.1, 2 and 4 in their respective service registers.

C.V. NAGARJUNA REDDY, J

05-8-2015

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