

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

LETTERS PATENT APPEAL No.1 of 2011

JUDGMENT: (Per the Hon'ble Sri Justice Raghvendra Singh Chauhan)

The petitioners have challenged the order, dated 26.04.2010, passed by a learned Single Judge in Contempt Case No.446 of 2010, whereby the learned Single Judge has set aside the order, dated 09.10.2009, passed by the Revenue Divisional Officer, Vizianagaram Town, Vizianagaram District, the respondent No.2 before this Court.

2. Briefly the facts of the case are that Sri Neelayamma Choultry, the respondent No.1 before this Court, had challenged the legality of an order, dated 03.02.2007, passed by the Revenue Divisional Officer, Vizianagaram, before the learned Writ Court. By order dated 28.04.2009 the learned Writ Court had set aside the order, dated 03.02.2007, and had directed respondent No.2 to pass a fresh order without taking upon himself the task of deciding the title of the land. Respondent No.2 was further directed to strictly go by the record in relation to the

land, namely be it, the decree in O.S.No.6 of 1951 and the entries in the revenue records, or the records maintained by the department. This exercise was to be completed within a period of six weeks from the date of receipt of a copy of the said order.

3. In compliance of the order, dated 28.04.2009, the Revenue Divisional Officer, the respondent No.2, passed an order, dated 09.10.2009. However, Sri Neelayamma Choultry was of the opinion that even the said order, dated 09.10.2009, was not in consonance with the order dated 28.04.2009, passed by the learned Writ Court. Therefore, Sri Neelayamma Choultry filed a Contempt Case before the learned Single Judge against the Revenue Divisional Officer, the respondent No.2, the respondent Nos.3 and 4 and the petitioners, before this Court. While noticing the facts that the order, dated 09.10.2009, amounts to contempt of Court, and that the Revenue Divisional Officer has extended unconditional apologies to the Court, by the order dated 26.04.2010, the learned Single Judge has set aside the order, dated 09.10.2009, without accepting the apology, or without

discharging respondent No.2 from contempt. Hence, this appeal before this Court.

4. The learned counsel for the petitioners has pleaded that the learned Contempt Court has travelled far beyond its contempt jurisdiction by setting aside the order dated 09.10.2009. In fact, the legality of the said order was not challenged before the learned Contempt Court. It was the case of the complainant, before the learned Contempt Court, that the order dated 09.10.2009 was not in consonance with the order, dated 28.04.2009, passed by the learned Writ Court. Hence, a contempt was made out.

5. On the other hand, the learned counsel for respondent No.1 has relied upon the case of **Special Deputy Collector (L.A.), SRBC, Nandyal v. N.Vasudeva Rao**¹ in order to plead that a Contempt Court is well within its power to set aside an order, which is contemptuous in nature. Therefore, the learned counsel has supported the impugned order dated 26.04.2010.

¹ LAWS (APH) 2003 9 52

6. In the alternative, the learned counsel for the petitioners has also pleaded that if this Court were to set aside a part of the impugned order, whereby the learned Contempt Court had set aside the order, dated 09.10.2009, then, the case should be remanded to the learned Contempt Court in order to decide whether the action of respondent No.2 – the Revenue Divisional Officer, tantamounts to contempt of Court or not? In support of this contention, the learned counsel for respondent No.1 has relied upon the case of **B.R.Meena, Vice-Chairman and Commissioner, A.P., Housing Board v. T.Bajrang²** in order to plead that there is no need to send the case back to the learned Contempt Court once the said Court has accepted the apology and discharged the contemnor.

7. Heard the learned counsel for the parties, perused the impugned order, and considered the case law cited at the Bar.

8. It is trite to state that the contempt jurisdiction is extremely narrow one. While exercising the said jurisdiction,

² 2011 (4) ALT 709 (D.B.)

the Contempt Court is expected, either to discharge the contemnor or to punish the contemnor if it finds the contemnor guilty of having committed the contempt of Court. But it cannot look into the illegality of an order allegedly passed by the contemnor and sets it aside. For, it is the action or omission of the contemnor, which is to be adjudged as being contemptuous in nature. It is not the legality of the order which is challenged before the Contempt Court. The legality of an order passed by an authority necessarily has to be considered by the Court vested with the jurisdiction to examine the same. But the said jurisdiction can neither be bestowed upon, nor usurped by the Contempt Court. (Ref- to **Sebastian M. Hongray v. Union of India**³ and **Patel Rajnikant Dhulabhai v. Patel Chandrakanth**⁴).

9. A bare perusal of the impugned order, dated 26.04.2010, clearly reveals that the learned Contempt Court had come to the conclusion that *“the order is totally untenable and amounts to contempt of Court.”* It has also noticed the fact that the Revenue Divisional Officer, respondent No.2, had

³ (1984) 3 SCC 82

⁴ (2008) 14 SCC 561

appeared before the Court and had tendered an apology. But instead of accepting the apology, and discharging the contemnor - respondent No.2 from contempt, the learned Contempt Court has set aside the order, dated 09.10.2009, even when the said order was not challenged before it. Thus, the learned Contempt Court has gone beyond its jurisdiction. Therefore, this part of the order, dated 26.04.2010, is clearly unsustainable. Therefore, this part of the impugned order is hereby set aside.

10. Although the learned counsel for respondent No.1 has relied upon the case in **N.Vasudeva Rao** (supra), the said judgment is distinguishable on factual matrix. For, in the said judgment, the order that was passed was a clarifactory order. However, the order passed in the present case is not a clarifactory order. In fact, it is a fresh order passed in pursuance of the order passed by the learned Writ Court. Therefore, the case of **N.Vasudeva Rao** (supra) does not support the case of respondent No.1.

11. Similarly, although the learned counsel for the petitioners has relied upon the case in **B.R.Meena**

(supra), even the said case does not come to the rescue of the petitioners. For, in the said case, the contemnor was discharged by the Contempt Court. However, in the present case, the learned Contempt Court has not accepted the apology tendered by the Revenue Divisional Officer, but it has merely set aside the order, dated 09.10.2009.

12. Since a part of the impugned order is being set aside, per force, this case has to be remanded to the learned Contempt Court in order to decide whether the apology tendered by the Revenue Divisional Officer is sufficient to discharge him of contempt, or whether the learned Contempt Court shall proceed against him?

13. For the reasons stated above, this Letters Patent Appeal is partly allowed. The part of the impugned order setting aside the order, dated 09.10.2009, is set aside. The case is remanded to the learned Contempt Court to decide the issue mentioned hereinabove.

14. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, J

M.SATYANARAYANA MURTHY, J

14th December, 2018
GHN

