

HON'BLE SRI JUSTICE S.V.BHATT

C.C.No.807 OF 2014

ORDER:

Heard Sri C.B.Ram Mohan Reddy, learned counsel for the petitioners and Sri A.Veera Swamy, learned Government Pleader for sole respondent.

This contempt case is filed complaining willful and deliberate disobedience of the order dated 08.08.2012 in W.P.No.26480 of 2010.

Through order dated 08.08.2012, W.P.No.26480 of 2010 was disposed of as follows:

“The Act and the Rules made thereunder stipulate various conditions, such as the applicant being in possession of land; the extent of the land held by him; the state of affairs existing over the land, when the application was made, in the context of continuous possession. These aspects need to be verified only by the 2nd respondent. Therefore, no exception can be taken to the order under challenge. The interests of the petitioners can be protected by restricting the scope of examination of the matter by the 2nd respondent to the one of identification of the land and whether ryotwari pattas were granted in respect of the lands in the immediate neighbourhood of the land, which is the subject-matter of these proceedings.

Hence, the writ petition is disposed of, upholding the order dated 04.09.2010, passed by the 1st respondent, but directing that the 2nd respondent shall restrict his consideration of the matter on remand, to the question of identifying the land, which is the subject-matter of the application of the petitioners and as to the question whether ryotwari pattas were granted in respect of the lands in the immediate neighbourhood of the land applied for by the petitioners and which formed part of erstwhile survey No.3. This exercise shall be completed within two months from the date of receipt of a copy of this order.”

Through order S.R.No.11(a)1/2014/F2 (Rc.No.1238/2003/F2) dated 22.05.2014, the respondent rejected the claim of petitioners herein for grant of ryotwari patta under 11(a) of the Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short ‘the Act’). The paragraphs which are stated to be contumacious read as follows:-

“The Hon’ble High Court of A.P., Hyderabad by an order dated

08.08.2012 disposed of the writ petition, upholding the order dated 04.09.2010 of the Commissioner of Appeal, O/o the CCLA., A.P., Hyderabad, but directed the Joint Collector-cum-Settlement Officer, Visakhapatnam to restrict his consideration of the matter on remand, to the question of identifying the land, which is the subject matter of the application of the petitioners and as to the question whether the ryotwari pattas were granted in respect of the lands in the immediate neighbourhood of the land, applied for by the petitioners which formed part of the erstwhile O.S.No.3”

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“As seen from the report dated 01.12.2013 of the Tahsildar, Visakhapatnam (Urban) Mandal which is available in the record, the entire extent of Ac.66.60 cents covered by Old S.No.3 of Kapparada Village stands classified as Hill Poramboke locally known as “Singarayametta”. During survey and settlement operations, the area covered by S.No.3 was divided into several survey numbers and the S.No.9 with total extent of Ac.41.25 cents is one of such survey number. The petitioners herein claim for an extent of Ac.4-96 cents in R.S.No.9/6 part of Kapparada Village.

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The ryotwari pattas granted in respect of the land covered by S.No.9/3, 9/5, 9/7 and 9/9 have only attained finality. The land covered by S.No.9/5 for which ryotwari patta was allowed is situated towards western side of the claim land, but not situated within the immediate neighbourhood of the claim land, since there exist a part of the land covered by S.No.9/6 in between the claim land and the land covered by S.No.9/5. Now the only extent of Ac.1-95 cents in S.No.9/7 for which ryotwari patta was allowed is only situated within the immediate neighbourhood of the claim land. Except this extent no other extent for which ryotwari pattas were granted is situated within the immediate neighbourhood of the claim land. Even the extent covered by S.No.9/7 is slope of the hill, while the claim land is top of the Hill.”

By referring to the rejection through order dated 22.05.2014 and also the observations in the said order, the petitioners complain willful and deliberate disobedience of the order of this Court in W.P.No.26480 of 2010.

The following circumstances are referred to for appreciation of the willful disobedience complained against the respondents.

In the year 2003, the petitioners made a claim for grant of ryotwari patta under Section 11(a) of the Act. The application was filed with an application to condone the delay. The claim of petitioners was rejected as barred by limitation. The said rejection was the subject matter of appeal in R.P.No.4/2004/VSP/D2 dated 28.08.2004. Aggrieved by the dismissal of revision, the petitioners filed further revision before the Chief Commissioner of Land Administration in Case No.P1/1062/2004 on 26.11.2005. The Chief Commissioner of Administration condoned the delay

and remanded the matter to Director of Settlements, Hyderabad. The Director of Settlements through order dated 10.06.2009 in R.P.No.19/2005(A2) dismissed the revision. Against the said dismissal, the petitioners filed further revision before Commissioner (Appeal), Office of CCLA. The CCLA through order No.P1/670/2009 dated 04.09.2010 remanded the matter to the Joint Collector-cum-Settlement Officer **“for fresh enquiry”** into the matter keeping in view the judgments referred in the order. The case was remanded to the Joint Collector-cum-Settlement Officer, Visakhapatnam for fresh enquiry and disposal of the case on merits. The Settlement Officer-cum-Joint Collector was directed to verify the status of the schedule land in question. The petitioners filed W.P.No.26480 of 2010 against the order dated 04.09.2010 of the CCLA. As already noted, the said writ petition was disposed of with the observations already excerpted.

The case of petitioners is that the order dated 04.09.2010 of Commissioner of Appeals was challenged in W.P.No.26480 of 2010. Through order dated 08.08.2012, this Court restricted the scope of examination of enquiry by the Joint Collector-cum-Settlement Officer as to the identification of the land and on the question whether ryotwari pattas were granted to neighbouring lands.

Except the above, it is the case of petitioners that the respondent cannot consider or enquire into and further pass an order without taking record of the categorical observations of this Court. Such procedure by the respondent is deliberate and amounts to willful disobedience of the order dated 08.08.2012 and contumacious. On receipt of notice, the respondent filed counter.

It is incidentally required to be noted that this Court through docket order dated 29.12.2014 recorded a *prima facie* finding that the Joint Collector by passing the order dated 22.05.2014 has committed contempt of court not only by misreading the order dated 08.08.2012 but also making observations running contrary to the order

of this Court. When these omissions were pointed out, the learned Government Pleader submitted that he would

instruct the Joint Collector to withdraw the order dated 22.05.2014. On account of the observation, the respondent was permitted to file additional counter-affidavit explaining his stand on the concession given by the learned Government Pleader appearing for him etc. The additional counter affidavit is filed by respondent.

Sri C.B.Ram Mohan Reddy, learned counsel for the petitioners, vehemently contends that the order of respondent dated 22.05.2014 has gone beyond the findings recorded by this Court in W.P.No.26480 of 2010. The respondent, no doubt, is the primary authority for grant of ryotwari patta under Section 11(a) of the Act, the respondent cannot expand enquire in file SR.No.11(a)1/2014/F2 (Rc.No.1238/2003/F2) and give findings as if the case is taken up for enquiry for the first time. In other words, the learned counsel submits that the remand to the respondent is with restrictive consideration or enquiry and the respondent cannot examine other aspects and refuse to grant ryotwari patta to petitioners. The learned counsel in support of what is willful disobedience or contumacious relies upon the decisions reported in **DELHI DEVELOPMENT AUTHORITY v. SKIPPER CONSTRUCTION CO.(P) LTD.** The learned counsel prays for imposition of punishment on the respondent.

The learned counsel for the petitioners further contends that this Court through docket order dated 29.12.2014 has recorded *prima facie* finding on the willful disobedience and also the stand of learned Government Pleader to advise the respondent to withdraw the order dated 22.05.2015. In view of the above docket order, the further enquiry in the contempt case is limited to find the guilt conclusively and imposing punishment.

Sri A.Veera Swamy, learned Government Pleader, representing the respondent, submits that the issue arises under Section 11(a) the Act. The petitioners have laid claim for grant of ryotwari patta under Section 11(a). Admittedly, the respondent who was the Joint Collector-cum-Settlement Officer was the primary authority to consider the claim for grant of ryotwari patta. As is admitted and also evident from the material available on record, the petitioners laid a claim for grant of ryotwari patta in the year 2003. The claim was rejected on the ground that the claim is barred by limitation. The subsequent pursuit of legal remedies by the petitioners is as against the primary finding of the Joint Collector-cum-Settlement Officer viz., the claim is

barred by limitation. So this finding was considered by the Director of Settlements or Commissioner of Appeals. The delay was condoned and the matter was remanded to the Director of Settlements for fresh consideration. On merits, the Director of Settlements dismissed the claim of petitioners. The petitioners filed further revision before the Commissioner of Appeals and the Commissioner of Appeals has remanded the case to the Joint Collector-cum-Settlement Officer for fresh enquiry and disposal of the case on merits verifying the status of schedule land in question. It is stated that through the order in writ petition, this Court has recorded a finding that these aspects need be verified only by the Joint Collector-cum-Settlement Officer. Therefore, no exception

can be taken to the order complained in the contempt case.

The restrictive consideration of enquiry by respondent to the identification of land and whether ryotwari pattas were granted in respect of the lands in the neighbourhood, is also considered by the respondent and passed the order dated 22.05.2014. With the passing of order on 22.05.2014, the remedies open to the petitioners are to assail these findings in a statutory appeal and the findings do not amount to either willful or deliberate disobedience of the orders of this Court.

The learned counsel further submits that the previous litigation in this behalf was with limited grounds and against the findings then recorded by the primary authority. When this Court has found no exception to such an enquiry being taken up by the Joint Collector-cum-Settlement Officer, being the primary authority in a *bona fide* belief of his authority under the Act, the respondent has passed the order dated 22.05.2014. As the primary authority, the respondent can take note of requirements under Section 11(a) of the Act and cannot restrict consideration only to the identification of the land and grant of pattas in the neighbourhood. Such enquiry amounts to ignoring the crucial aspects for grant of ryotwari patta under Section 11(a) of the Act. He, therefore, contends that through the order dated 08.08.2012 in writ petition, it cannot be conclusively held that this Court intended to give direction for disposal of enquiry pending before the Joint Collector-cum-Settlement Officer contrary to statute. He finally submits that the respondent has respect for the orders of this Court and the explanation offered by the respondent is sufficient to hold that there is no intentional or wanton violation of the order in W.P.No.26480 of 2010 dated 08.08.2012. The respondent has placed on record his unconditional apology.

He prays for dismissal of the contempt case.

The learned Government Pleader relies upon the decisions reported in (1) **J.S.PARIHAR v. GANPAT DUGGAR AND OTHERS**, (2) **UNION OF INDIA AND ANOTHER v. P.M.RANGASWAMI**, (3) **ANIL KUMAR SHAHI AND OTHERS v. PROF. RAM SEVAK YADAV AND OTHERS**, (4) **SUSHILA RAJE HOLKAR v. ANIL KAK (RETIRED)**, and (5) **KANWAR SINGH SAINI v. HIGH COURT OF DELHI**.

In **J.S.PARIHAR**'s case (2 supra), the Apex Court held as under:

“once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum.”

In **P.M.RANGASWAMI**'s case (3 supra), the Apex Court held as under:

“There is no dispute that there was no challenge to the seniority list prior to 1997. Challenge to the change of date was not vis-à-vis Trehan and Nampoothiry. So far as the entry to Grade IV is concerned, the applicant was junior to Trehan and Nampoothiry. The challenge in the OA was not in respect of Trehan and Nampoothiry. As noted, there was no grievance prior to 7-3-1997. It is to be noted that there was no direction for promotion and only for consideration. Therefore, the question of any automatic promotion does not arise. The Tribunal never held that the respondent was entitled to promotion notwithstanding losing seniority. It appears from the record that despite losing seniority the respondent was considered for promotion to HAG on the basis of Tribunal's order.

The parameters to be considered while deciding as to whether contempt has been committed has been considered by this Court in several cases. For example *Prithawi Nath Ram v. State of Jharkhan*, *Director of Education v. Ved Prakash Joshi*, *Dilip Mitra v. Swadesh Chandra Bhadga*, *Chhotu Ram v. Urvashi Gulati* and *Suresh Chandra Poddar v. Dhani Ram*.

Above being the position, the Tribunal was not justified in holding that contempt had been committed. If the respondent has any grievance, it is open to him to assail the same in an appropriate proceeding.

In **ANIL KUMAR SHAHI**'s case (4 supra), the Apex Court held as under:

“It is by now well-settled under the Act and under Article 129 of the Constitution of India that if it is alleged before this Court that a person has willfully violated its order it can invoke its jurisdiction under the Act to enquire whether the allegation is true or not and if found to be true it can punish the offenders for having committed 'civil contempt' and if need be, can pass consequential orders for enforcement of execution of the order, as the case

may be, for violation of which, the proceeding for contempt was initiated. In other words, while exercising its power under the Act, it is not open to the court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the order”.

In **SUSHILA RAJE HOLKAR**'s case (5 supra), the Apex Court held as under:

“A proceeding under the Contempt of Courts Act has a serious consequence. Whether the alleged contemnor has willfully committed breach of the order passed by a competent court of law or not having regard to the civil/evil consequences ensuing therefor require strict scrutiny. For the said purpose, it may be permissible to read the order of the court in its entirety. The effect and purport of the order should be taken into consideration. Whereas the court shall always zealously enforce its order but a mere technicality should not be a ground to punish the contemnor. A proceeding for contempt should be initiated with utmost reservation. It should be exercised with due care and caution. The power of the court in imposing punishment for contempt of the court is not an uncontrolled or unlimited power. It is a controlled power and restrictive in nature (See Re: P.C. Sen [(1969) 2 SCR 649] and [Jharieswar Prasad Paul and Another v. Tarak Nath Ganguly](#) [(2002) 5 SCC 352]). A contemnor, thus, may be punished only when a clear case for contumacious conduct has been made out.

In **KANWAR SINGH SAINI**'s case (6 supra), the Apex Court held thus:

“The contempt proceedings being quasi-criminal in nature, the standard of proof requires in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the Criminal Jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures”.

Now, the point for consideration is - whether the respondent, in the facts and circumstances of this case, committed willful and deliberate disobedience of the order dated 08.08.2012 by passing the order S.R.No.11(a)1/2014/F2 (Rc.No.1238/2003/F2) dated 22.05.2014.

Before considering the alleged willful disobedience by the respondent, this Court is required to consider the docket order dated 29.12.2014 and the additional counter-affidavit filed by the respondent.

The proceedings sheet records that the order dated 22.05.2014 *prima facie* amounts to contempt and misreading the order of this Court dated 08.08.2012. By recording such a tentative finding, the statement of learned Government Pleader that he would instruct the Joint Collector to withdraw the order is also placed on record. It is on these two aspects of the matter the additional counter-affidavit dated 28.02.2015 is referred. The respondent categorically submits that he did not instruct the then Government Pleader to represent on the lines recorded in the docket proceedings, much less the learned Government Pleader instructed the Joint Collector subsequent to the said order, to withdraw the proceedings dated 22.05.2015. The respondent, in

his best judgment as primary authority, passed the order and, therefore, he requests the Court to consider the totality of circumstances and decide the issues in the contempt case.

The petitioners are complaining against the respondent against willful and deliberate disobedience of order dated 08.08.2015.

As already noted, once the order is passed by the primary authority, a party aggrieved by such an order has the remedy of appeal either under statute or can invoke the jurisdiction of a competent Court, including this Court under Article 226 of the Constitution of India. This Court, while examining the alleged contempt, will not sit in appeal on the order dated 22.05.2014 and look at the findings in the background of the orders already passed in the same matter. The complaint against the respondent is that the respondent, instead of undertaking the restrictive consideration of points formulated by this Court and consider the claim of petitioners under Section 11(a), has gone into the nature of land, possession of petitioners etc., and recorded findings rejecting the claim. Such consideration amounts to willful disobedience.

I have considered the submission of learned counsel for petitioners and the respondent. The powers under Article 215 of the Constitution of India and also Sections 11 and 12 of the Contempt of Courts Act, 1971 are provided to uphold the dignity of the orders of Court of law. The jurisdiction in a contempt case being quasi criminal, the allegations or the record must conform to the requirements of the law to hold a person guilty of contempt.

I am not reiterating the principles referred to by the learned counsel appearing for both the parties. The acceptance of petitioners' case or the explanation offered by

the respondent is dependant on the consideration of enquiry under Section 11(a) of the Act. As already noted, the Commissioner (Appeals), while remanding the matter to the primary authority, directed fresh enquiry and keep in view the judgments which have bearing on the issue. The respondent was directed to conduct fresh enquiry and dispose of the case on merits verifying the status of the schedule land in question. Even this Court while disposing of the writ petition has taken note of the scope of enquiry by the 2nd respondent and further held that no exception can be taken to the order of Commissioner of Appeals dated 04.09.2010. The observations are in the context of protecting the interest of the petitioners.

This Court directed the respondent to identify the land and as to whether pattas have been granted in the neighbourhood or not. From a careful reading of the order in W.P.No.26480 of 2010, I have difficulty in accepting the case of petitioners that this Court has restricted the scope of enquiry under Section 11(a) of the Act;

that the patta to the petitioners should be granted with the mere identification of the land; and grant of pattas in neighbourhood. The 2nd respondent is a statutory authority and it is well settled that the description of the statutory authority, more particularly when there was no consideration of requirements under Section 11(a) of the Act in earlier cases, this Court restricted the scope only to two aspects of the matter. At best, it can be said that the respondent as a statutory authority in his best judgment has passed the order. In the opinion of this Court, for passing the order in his capacity as an authority, in the facts and circumstances of this case and having regard to the availability of remedy of appeal against the order dated 22.05.2014, I am unable to concur with the submissions of the learned counsel for the petitioners. The respondent by filing additional counter-affidavit has given reasons for not withdrawing the order and the respondent requested this Court to decide the issue on merits. The contempt case is considered in its own merits and decided without reference to the docket order dated 29.09.2014. *Prima facie*, it is evident that the respondent has acted under Section 11(a) and such approach cannot be termed as willful and deliberate contempt. The principles laid down in the decisions referred above squarely support the respondent and the contempt case is without merits.

In the circumstances, the contempt case is dismissed. The dismissal of the contempt case, however, does not preclude the petitioners from pursuing the legal remedies against the order dated 22.05.2014. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this contempt case shall stand closed.

S.V.BHATT, J

20th March, 2015

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