THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.A.Nos.685 of 2015, 699 of 2015, 990 of 2015 and 991 of 2015
in
C.C.No.964 of 2014
and
C.C.No.964 of 2014
In
W.P.No.32502 of 2010

COMMON ORDER:

This Contempt Case is filed alleging willful disobedience of the order dt.07-06-2013 in W.P.No.32502 of 2010 by respondents and to punish them for the same under Sec.12 of the Contempt of Courts Act, 1971.

2. Brief facts leading to the filing of this Contempt Case are set out as under:

THE WRIT PETITION FILED BY THE 1st PETITIONER

(i) The 1st petitioner herein claimed to be the pattedar of an extent of Ac.14.00 of land in Yerrasanivari Banzar, Hamlet of Goduru Revenue village, Vemsoor Mandal, Khammam District and alleged that this entire land was submerged at the time of formation of Edulla Cheruvu Tank in 1976 and that he did not receive any compensation from the respondents in the Writ Petition for the same.

(ii) He relied on a letter Rc.No.B/442/2006 dt.09-05-2006 of the Mandal Revenue Officer, Vemsoor addressed to the Dy. Executive Engineer, I.B. Sub-Division, Sathupalli, Khammam District stating that he conducted a detailed enquiry and that the 1st petitioner's land was submerged under Edulla Cheruvu tank;

that the lands are patta standing in the name of the 1st petitioner in 1976-77; that as per his enquiry and statements recorded, the 1st petitioner did not receive any compensation for the submergence of his land. The Mandal Revenue Officer, Vemsoor therefore recommended that the Dy. Executive Engineer, I.B. Sub-Division, Sathupalli, Khammam District take necessary steps for payment of compensation to the 1st petitioner. The 1st petitioner also relied on a letter L.Dis.No.G/1546/2006 dt.26-05-2006 of the then District Collector, Khammam addressed to the Executive Engineer, I.B.Sub-Division, Sathupalli, Khammam District referring to the letter Rc.B/42/2006 dt.09-05-2006 referred to above wherein the then District Collector, Khammam directed the latter to take necessary steps for payment of compensation to 1st petitioner. He further relied upon letter No.DEE/TSK/T-9/1451-52/1 SET/C-E dt.27-08-2007 of the Superintending Engineer I & CADD, Irrigation Circle, Warangal addressed to the Chief Engineer, I & CADD, Minor Irrigation, Erramanzil, Hyderabad stating that the land of the 1st petitioner was submerged and the 1st petitioner had represented through the District Collector, Khammam for arranging payment of land compensation. The Superintending Engineer stated that although some ryots of the Errasani Banzara village had given no objection for giving their lands for formation of the said tank, the 1st petitioner had not done so and therefore the Chief Engineer is requested to accord permission whether to submit necessary Land Acquisition proposals or not for paying compensation for his land. The 1st petitioner alleged that he had also submitted a representation to the then Chief Minister on 25-04-2008 in this regard with

copies sent to the Principal Secretary to then Govt. of A.P., Irrigation and the Chief Engineer, Minor Irrigation and no action had been initiated in this regard.

(iii) He therefore prayed that a Writ of Mandamus be issued directing the respondents in the Writ Petition to pay compensation as per market value by treating the land as having been acquired for public purpose as on the date of the filing of the Writ Petition.

(iv) A miscellaneous application W.P.M.P.No.41308 of 2010 was also filed to direct the respondents in the Writ Petition to pay actual land cost as on the date of the filing of the Writ Petition as per market value in one month.

(v) On 24-12-2010, the said Writ Petition was admitted and notice was directed to the respondents therein.

COUNTER AFFIDAVIT IN THE WRIT PETITION OF EXECUTIVE ENGINEER, I.B.SUB-DIVISION, SATHUPALLY, KHAMMAM (5th respondent in the W.P)

-

(vi) Counter-affidavit was filed in the said Writ Petition by the Executive Engineer, I.B. Sub-Division, Sathupally, Khammam admitting that the land of the 1st petitioner was submerged under the said tank in 1976 and alleging that on account of laches, the 1st petitioner was not entitled to any relief. The Executive Engineer contended that because of the inaction of the 1st petitioner, the Revenue and Irrigation Departments took no action. The proceedings in Letter Rc.No.D/422006 dt.09-05-2006 of the Mandal Revenue Officer, Vemsoor, the proceedings Dis.G/1546/2006 dt.26-05-2006 of the District Collector, Khammam addressed to the Executive Engineer and the letter No.DEE/TSK/T-9/1451-52/1 Set/CE

dt.27-08-2007 of the Superintending Engineer addressed to the Chief Engineer were admitted.

(vii) None of the other respondents in the Writ Petition filed any counter-affidavit in the Writ Petition.

(viii) The 1st petitioner died on 25-01-2013 and thereafter his son, the 2nd petitioner, filed W.P.M.P.No.11724 of 2013 to bring him on record as the legal representative of the deceased 1st petitioner. The said application was allowed on 16-04-2013.

(ix) Subsequently the matter was listed on 24-04-2013, 06-06-2013 and 07-06-2013.

THE DECISION IN THE WRIT PETITION

(x) On 07-06-2013, after hearing submissions of the learned counsel for petitioners and the learned Government Pleader for Irrigation and Command Area Development, the Writ Petition was allowed rejecting the contention of the respondents therein that the delay on the part of the 1st petitioner in filing the Writ Petition would disentitle him from any relief in the Writ Petition seeking payment of compensation. A direction was given to the respondents therein to forthwith initiate proceedings under the Land Acquisition Act, 1894 acquiring their land, to determine the amount of compensation payable to them, after issuing notice to 2nd petitioner and then pay the same to them.

THE PRESENT CONTEMPT CASE C.C. No.964 OF 2014

(xi) Thereafter in June, 2014, C.C.No.964 of 2014 was filed by the 2nd petitioner alleging that the respondents in the CC had done nothing to implement the order passed by this Court in the

Writ Petition on 07-06-2013 in spite of the fact that he had submitted a representation dt.21-09-2013 to the 1st respondent with copies marked to other respondents seeking payment of compensation and therefore they are guilty of willful disobedience of the said order and liable to be punished.

(xii) The Contempt Case was listed on 30-06-2014 when Notice before Admission was ordered, at which time the Government Pleader for Land Acquisition, State of Telangana took notice and sought two weeks time to file counter. The matter was then listed on 08-07-2014, 15-07-2014, 01-08-2014 and 22-01-2015.

COUNTER AFFIDAVIT DT.11-12-2014 OF CH.RAMULU, TAHSILDAR, VEMSOOR MANDAL ON BEHALF OF 8TH RESPONDENT IN THE C.C.

-

(xiii) In the said Contempt Case, Ch.Ramulu, Tahsildar, Vemsoor Mandal (8th respondent in the C.C.) filed a counter-affidavit dt.11-12-2014 *admitting about the submergence of the land of the*

1st petitioner under the above tank constructed in 1976 but stated that although the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 had come into force from 01-01-2014, the Rules were not issued by the concerned State Government for initiating the Land Acquisition process thereunder and therefore the process of initiating land acquisition was delayed. He stated that even by 11-12-2014, the guidelines from the competent authority were not communicated to process the land acquisition proposals, that the Executive Engineer, I.B. Sub-Division had submitted proposals to

the District Collector (7th respondent) on 15-07-2014, and further time was required to initiate the land acquisition process. The docket of the said Counter indicates that he filed the said counter on behalf of respondents 2-8.

THE COUNTER AFFIDAVIT dt.15-01-2015 OF PVA PRASAD, THE EXECUTIVE ENGINEER, IB SUB-DIVISION IN THE C.C.

-

(xiv) One PVA Prasad, Executive Engineer, Irrigation Division, Khammam filed on 22.1.2015 a counter-affidavit dt.15-01-2015 in the Contempt Case on his behalf and on behalf of respondent Nos.1 to 4 and 6 stating that the order passed by this Court dt.07-06-2013 in the Writ Petition was received by the respondents on 02-07-2013, and from that date onwards, there is water with full level in the tank, that survey work could not be conducted and there is therefore a delay in initiating the land acquisition proposals and sending them to the Government. He stated that the survey work was done by the Asst. Engineer, Irrigation Section, Vemsoor and the Dy. Executive Engineer, IB Sub-Division in May, 2014 and proposals were sent to the Executive Engineer, IB Sub-Division in June, 2014 for taking necessary steps and thereafter the Executive Engineer, IB Sub-Division submitted proposals for acquisition of the land of the respondents to the 7th respondent/District Collector in July, 2014. He further stated that on 02-06-2014, the State of Telangana was formed and the State Government had not framed Rules in respect of the new Land Acquisition Act and therefore the compensation could not be paid to the 2nd petitioner. *It was categorically stated that the respondent were ready to pay compensation to the 2nd petitioner in respect of the submerged*

land as soon as Rules were framed. It was again stated that more time would be needed and there is no willful disobedience of the orders of this Court.

(xv) On 22-01-2015, four weeks time was granted in the C.C. for implementation of the order in the Writ Petition taking into account paras-6 and 7 of the counter dt.15-01-2015 filed by the Executive Engineer, IB Sub-Division on 22-01-2015. Thereafter the matter was listed on 19-03-2015, 09-04-2015 and 10-04-2015 and on 10-04-2015, time of one month was granted to comply with the order in the Writ Petition.

THE C.C. IS ADMITTED ON 02-06-2015

(xvi) The case was then listed on 02-06-2015. Having come to the conclusion that nothing was done by the respondents for complying with the order passed on 07-06-2013 to forthwith acquire and pay compensation to the petitioners, this Court admitted the Contempt Case against the respondents on 02-06-2015.

COUNTER AFFIDAVIT dt.15-06-2015 BY EXECUTIVE ENGINEER, IB SUB-DIVISION IN THE C.C.

-

(xvii) On 15-06-2015, another counter-affidavit was filed by the Executive Engineer, IB Sub-Division detailing further steps taken after the land acquisition proposals were submitted on 15-07-2014 to the 7th respondent by him and stating that the 7th respondent had appointed vide proceedings in Rc.No.G/189/2011 dt.04-05-2015 the Special Deputy Collector, LA (IPT & R), Khammam as Land Acquisition Officer for expeditious completion of land acquisition work and also constituted a team as per Chapter-II of 4(1) mentioned in the new

Land Acquisition Act for making preliminary enquiry in the matter and fixing time frame of one week. It was also stated that this team along with the Field Staff inspected the site on 21-05-2015 and opined that the land in Sy.No.143 is *gut* number having extent Ac.440.26 gts, that detailed survey should be conducted for preparation of sub-division records, that it is to be ascertained whether it is Government or patta land, and soon after finalization of nature of possession of petitioners, necessary action would be taken as per the Land Acquisition Act. *Thus even at this stage the respondents showed an inclination to comply with the order dt.7.6.2013 passed in the Writ petition by this Court.*

(xviii) On 02-07-2015, when the matter was again listed, direction was given to the Government Pleaders for Irrigation and Land Acquisition to file an affidavit through the concerned respondents as to who was responsible for not implementing the orders passed by this Court in the Writ Petition and the matter was posted to 06-07-2015.

YET ANOTHER COUNTER DT.4.7.2015 OF SRI CH.CHITTI RAO, EXECUTIVE ENGINEER, IB SUB-DIVISION IN THE C.C.

-

(xix) In the counter-affidavit dt.04-07-2015 filed by Sri Ch.Chitti Rao, Executive Engineer, IB Sub-Division, it was stated that the lands were under submergence due to existence of water in the tank, that the water had not receded till April, 2014 and therefore survey could not be conducted for initiation of land acquisition proposals. Details of the persons holding the Offices of the Principal Secretary to the Government, Irrigation and Power Department and the posts of the respondent Nos.2 to 8 were mentioned therein. This Counter affidavit will be dealt at length in

the latter part of this Order.

THE REQUEST OF THE COURT TO THE ADVOCATE GENERAL TO ASSIST IT

(xx) Vexed with the inaction of the respondents, and since more than two years had elapsed since the Writ Petition was decided, the Court requested the Advocate-General (Telangana) to assist the Court and posted the matter to 08-07-2015. At his request, the matter was adjourned to 13-07-2015 and on that date he stated that fresh counter-affidavit of 7th respondent would be filed in one week.

THE *VOLTE FACE* BY RESPONDENTS IN COUNTER AFFIDAVIT FILED ON 17-07-2015 by 7th RESPONDENT IN THE C.C.

(xxi) The 7th respondent filed a counter-affidavit dt.17-07-2015 in the Contempt Case to dismiss the Contempt Case. *Contrary to the admissions made in the several counter-affidavits referred* to above about the title of 1st petitioner to the subject land, the 7th respondent disputed the title of the deceased 1st petitioner *for the first time* since the filing of the Writ Petition. In para 9 it is stated that Sy.No.143 is of extent Ac.440.26 gts and recorded as Gettu Number/Sarkari and name of one Ayyadevara Dharma Rao was recorded. It is stated that there were no subdivisions in this Sy.No in respect of which 1st petitioner was owner. In para-12 of the said counter, a table is given which indicates that the 1st petitioner was also joint holder of land in Sy.No.143. This plea is inconsistent with the plea that 1st petitioner had no title. It is also alleged that some ryots had given consent for the formation of the tank, but

the contention of the petitioners that he gave no such consent as evidenced by the letter dt.27-08-2007 of the Superintending Engineer, I and CADD addressed to the Engineer-in-Chief, Minor Irrigation, was not denied. *It is insinuated that*

1st petitioner gave such consent. It is also stated that the 1st petitioner had admitted in a suit filed by him in O.S.No.23 of 1989 against certain third parties that he was in possession of land measuring Ac.14.00 in Sy.No.143/3 (be it noted that in the affidavit filed in the Writ Petition by 1st petitioner he had stated that his land, which was submerged in the tank, was in Sy.No.143/5 and not in Sy.No.143/3). *It was therefore contended that the land of the 1st petitioner was not at all taken over by the Irrigation Department of the State* and that certain loans were also borrowed from Andhra Pradesh Grameena Vikas Bank, Beerapalli and Primary Agricultural Cooperative Society, Kondagatla Mallela Branch by petitioners. Thus the allegation of the

1st petitioner that his land was submerged in 1976 was denied.

THE REVIEW PETITION FILED BY RESPONDENTS

3. On the same day, a Review Petition Rev.W.P.M.P.No.31367 of 2015 was filed raising the pleas set out in para-(xxi) above and alleging that the order passed by this Court on 07-06-2013 is bad in law and contrary to the facts on record and the probabilities of the case. It was alleged that the petitioners approached this Court with unclean hands by suppressing relevant facts and obtained the order dt.07-06-2013, that the 1st petitioner had given consent for acquisition of land in Sy.No.143/5, and therefore is disentitled to claim compensation from the respondents. It was

also contended that the land of the 1st petitioner was not submerged since they obtained crop loans by showing the land to Banks apart from seeking waivers of crop loan from time to time. Reference was also made to the plaint in O.S.No.23 of 1989 and its contents referred to above. It was urged that the order dt.07-06-2013 in the Writ Petition was obtained by petitioners by playing fraud on Court.

COUNTER AFFIDAVIT FILED IN THE REVIEW PETITION BY 2nd PETITIONER

4. Counter-affidavit was filed to this application by the 2nd petitioner denying the above contentions. It was alleged that the Review Petition was filed only to avoid punishment in the Contempt Application and no grounds for review were made out.

(i) It was pointed out that the proceeding dt.27-08-2007 of the 4th respondent addressed to the 3rd respondent in Letter No.DEE/TSK/T9/1451-52/I set/CE clearly pointed out that the 1st petitioner had not given any consent to give his land.

(ii) It was asserted that the suit O.S.No.23 of 1989 related to land in Sy.No.143/2 and not with respect to land in Sy.No.143/5 although the extents of land owned by 1st petitioner in both Sy.Nos. was Ac.14.00 each. It was contended that the respondents were trying to confuse this Court by taking different stands. It was denied that any fraud was played by petitioners on respondents.

(iii) The allegation of respondents that petitioners were never in possession of land in Sy.No.143/5 of extent Ac.14.00, which had been submerged at time of formation of the tank, was denied, and

it was stated that there was nothing wrong in showing the title deed and taking loan from Bank and the Bank had accepted that petitioners were owners.

(iv) It was contended that no grounds exist for reviewing the order passed in the Writ Petition.

5. After hearing the Special Government Pleader attached to the Office of the Additional Advocate General for the respondents and Sri E.Seshagiri Rao, learned counsel for petitioner, the said Review Petition was dismissed on 17-08-2015.

THE DECISION IN THE REVIEW PETITION:

6. This Court held that no grounds for seeking review of the order dt.07-06-2013 in W.P.No.32502 of 2010 had been made out by the petitioners, and in fact the filing of this Review Petition, more than two years after the Writ Petition was decided and after filing of several counters in the Writ Petition as well as in the Contempt Case admitting the title of the 1st respondent and the submergence of his land for the tank, is an abuse of process of law. It was held that there was no fraud played by the petitioners on the respondents and the conduct of the respondents as set out above in attributing fraudulent conduct to the Writ petitioners/ respondents in the Review petition smacks of malafides and cannot be countenanced.

CONTENTIONS OF THE COUNSEL FOR THE PARTIES IN THE CONTEMPT CASE

-

7. The learned counsel for the petitioners contended that even though the Writ Petition had been allowed by this Court on 07-06-2013, there is absolutely no explanation offered

by any of the respondents in the Contempt Case for their inaction till end of December 2013; The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into effect with effect from 01-01-2014; in the counter affidavit

dt.11-12-2014 filed by Ch.Ramulu, the Tahsildar of Vemsoor Mandal (8th respondent) and also in the counter affidavit dt.22-01-2015 filed by PVA Prasad, Executive Engineer, IB Divisional, Khammam, there was a plea that certain Rules/guidelines were not framed by the State Government; how the absence of such rules/guidelines have disabled the respondents from implementing the order passed by this Court on 07-06-2013 in the Writ Petition, has not been explained by any of the respondents; although a plea was raised in the counter filed on behalf of himself as well as respondent Nos.1 to 4 and 6 by Sri PVA Prasad, Executive Engineer, Irrigation Division, Khammam District stating that as soon as the rules are framed, he is ready to pay compensation to the petitioners for the submerged land, nothing has been done by respondent Nos.1 to 6 except submission of a proposal by the said Executive Engineer on 15-07-2014 to the 7th respondent which was again returned and resubmitted on 2.4.2015; there is also a reference in the counter dt.22-01-2015 of Sri PVA Prasad, Executive Engineer, Irrigation Division, Khammam about difficulty in doing survey work on account of full water level in the tank which is also reiterated at page-14 in the subsequent counter affidavit dt.06-07-2015 of Sri Ch.Chitti Rao, Executive Engineer, Irrigation Division, Khammam, (who succeeded Sri PVA Prasad) at page-14 thereof; for what purpose a survey is being conducted when in the Writ Petition no dispute was raised about the ownership of the 1st petitioner of the

Acs.14.00 cts of land in Sy.No.143/5 of Yerrasanivari Banjara village or the extent thereof, is not explained; this conduct on part of respondents indicates that frivolous reasons are being furnished for the failure to comply with the order passed by this Court in the Writ Petition; without disputing the ownership of the petitioners of the above land in the Writ Petition and having admitted the title of the 1st petitioner to the said land in the proceeding Rc.No.B/442/2006 dt.09-05-2006 of the Mandal Revenue Officer, Vemsoor to the Deputy Executive Engineer, IB Sub Division, Sattupally, letter L.Dis.No.G/1546/2006 dt.26-05-2006 of the then District Collector, Khammam addressed to the Executive Engineer IB Sub Division, Sattupally and in the letter No.DEE/TSK/T-9/1451-52/ISET/CE dt.27-08-2007, it is not open to the respondents to question the right, title and interest of the petitioners in the above land in the contempt case; in fact, the title of the petitioners to the land was not disputed either in the counter affidavit dt.11-12-2014 of the 8th respondent or counter affidavit dt.22-01-2015 of Sri PVA Prasad, Executive Engineer, Irrigation Sub Division, Khammam or in the counter affidavit dt.16-06-2015 of Sri Ch.Chitti Rao, his successor, and it is not open to the respondents to raise this issue for the first time in the counter affidavit of the 7th respondent dt.17-07-2015; the statement in para 12 of the counter of 7th respondent that 1st petitioner was joint pattadar is inconsistent with plea that the land in Sy.No.143 was Sarkari land without any subdivision in favor of 1st petitioner; this conduct of the respondents is not *bona fide* and has to be termed as willful disobedience of the order dt.07-06-2013 passed by this Court in the Writ Petition. He therefore contended that the respondents

are liable to be punished under Section 12 of the Contempt of Courts Act, 1971 for willful disobedience of the said orders passed by this Court.

CONTENTIONS OF SPECIAL GOVERNMENT PLEADER FOR RESPONDENT Nos.1 to 8

-

8. The learned Special Government Pleader appearing for all the respondents contended that the hearing of the Contempt Case be postponed till a Writ Appeal filed by the respondents challenging the order dt.07-06-2013 in W.P.No.32502 of 2010 is decided stating that the said appeal was filed after the review petition was dismissed on 17-08-2015. He contended that the High Court order in W.P.No.32502 of 2010 has not attained finality and therefore proceedings for Contempt cannot be initiated by petitioner No.2. He further contended that a *bona fide* attempt was resorted to by the respondents by filing a Review Petition to place certain facts before this Court which was unfortunately rejected by it on 17-08-2015; filing of the Review petition or the Writ Appeal was only in public interest; compelling circumstances exist for not implementing the Court order; the delay in implementation of the order by the respondents cannot be said to be "willful disobedience" or defiance or supine indifference and that mere non-implementation by the respondents cannot be termed as indifference or willful conduct inviting punishment under Section 12 of the Act. He placed reliance on the decision of the Supreme Court of India in **Niaz Mohd. And others V. State of Haryana**[1].

9. The Government Pleader for Roads and Buildings representing Sri Pingali Satish and Md. Nazeer Ahmad, who are

impleaded as respondent Nos.4 and 5, stated that these two individuals are in fact working in R & B Department and not in Irrigation Department, and they have nothing to do with the Writ Petition or the petitioners or their land and had been impleaded by mistake in the Contempt Case and C.A.Nos.991 of 2015 and 990 of 2015 were filed to discharge them from these contempt proceedings be allowed.

-

-

C.A.No.685 of 2015

10. Sri V. Nagi Reddy, 1st respondent, had also filed an application C.A.No.685 of 2015 stating that he worked as Secretary to the Government of Telangana in the I and CAD Department only from 07-03-2014 to 02-06-2014; thereafter he took voluntary retirement on 15-04-2015; that he is employed as Election Commissioner for the State of Telangana since then; and so he may also be discharged from the Contempt proceedings. He pointed out that Sri Shailendrakumar Joshi is the Principal Secretary to the Government, I & CAD Department, State of Telangana and his name may be included in his place in the Contempt Case.

C.A.No.562 of 2015

11. Sri I. Srinivas Sri Naresh, I.A.S., who is impleaded as 7th respondent, filed C.A.No.562 of 2015 contending that he has been transferred on 31-07-2014 as Commissioner, Prohibition and Excise, Andhra Pradesh State from the post of District Collector, Khammam District, that he has been working in the said post and his presence may be dispensed with. On 02-06-2015,

this application was considered and the presence of Sri I.Srinivas Sri Naresh, I.A.S., was dispensed with.

C.A.No.699 of 2015

12. Sri L.Narayan Reddy, Engineer-in-Chief, Irrigation Department, Yerramanzil, Hyderabad, who is impleaded as 2nd respondent in the Contempt Case, also sought for dispensing with his appearance by filing C.A.No.699 of 2015 stating that he had no connection with land acquisition proceedings and he was only working as Engineer-in-Chief (Admn.), I & CAD Department for the combined State of Andhra Pradesh from 01-10-2011 to 01-06-2014; till 31-07-2014 he had worked as Engineer-in-Chief (Admn.), I & CAD Department for the State of Telangana from 02-06-2014; from
31-07-2014 he is posted as Director General, Water and Land Management Training and Research Institute, Hyderabad and his presence also may be dispensed with.

THE CONSIDERATION BY THIS COURT:

13. From the facts narrated above, it is clear that the Writ Petition No.32502 of 2010 was allowed on 07-06-2013 directing the respondents to *forthwith* initiate proceedings under the Land Acquisition Act, 1894 acquiring the petitioners' land, determine the amount of compensation payable to him after issuing notice to him and then pay the same to him.

14. Review W.P.M.P.No.31367 of 2015 filed on 21-07-2015 seeking Review of the above order in W.P.No.32502 of 2010 was dismissed on 17-08-2015.

WHETHER HEARING OF CONTEMPT CASE SHOULD AWAIT DECISION IN WRIT APPEAL?

15. Thereafter, according to the Special Government Pleader appearing for the respondents, a Writ Appeal had been preferred against the order dt.07-06-2013 in W.P.No.32502 of 2010 and the same is pending. He sought postponement of hearing of the Contempt Case till the Writ Appeal is decided contending that the order passed by this Court on 07-06-2013 had not attained finality.

16. I am unable to agree with the said contention. No order has been passed by the Division Bench in the said Writ Appeal staying the proceedings in the Contempt Case or staying the order dt.07-06-2013 in W.P.No.32502 of 2010 and even the Writ Appeal had been filed more than two years after the Writ Petition was decided. Mere filing of the Writ Appeal does not operate as a stay of the order in the Writ Petition. Nor does it operate as a stay of the hearing of the Contempt Case. Therefore I am of the opinion that decision in the Contempt Case need not await the disposal of the Writ Appeal.

IS DISOBEDIENCE OF ORDER DT.7.6.2013 WILLFUL?

17. Even though the order dt.07-06-2013 in the Writ Petition directed the respondents to act "*forthwith*", in the counter affidavits filed on behalf of the respondents, they do not seem to have done anything much other than respondents 1-6 submitting proposals to 7th respondent on 15-07-2014 and again resubmitting them on 02-04-2015. From 07-06-2013 till today no notification has been issued acquiring the land of the petitioners or paying

any compensation to them.

NOTHING AT ALL DONE FROM 07-06-2013 TO 31-12-2013

18. The several counter affidavits filed in the Contempt Case do not mention that the respondents had done anything *at all* from

07-06-2013 till 31-12-2013.

HOW ABSENCE OF GUIDELINES UNDER NEW LAND ACQUISITION LAW W.E.F 01-01-2014 DISABLED RESPONDENTS FROM IMPLEMENTING ORDER NOT EXPLAINED

-

19. On 01-01-2014, no doubt the Land Acquisition Act, 1894 was repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the 2013 Act). In the counter affidavits filed by the 8th respondent on 11-12-2014 and in the counter affidavit filed by Sri PVA Prasad, Executive Engineer, Irrigation Division, Khammam District dt.22-01-2015, it is pleaded that no guidelines have been framed under the said Act and this had delayed the process of initiating land acquisition of the petitioners' land. How the absence of guidelines under the 2013 Act had prevented or disabled the respondents from issuing a notification under the said Act and paying compensation to petitioners is not stated by any of the respondents.

-

EVEN AFTER GUIDELINES WERE FRAMED ON 19.12.2014, NOTHING WAS DONE BY RESPONDENTS

20. There is no dispute that the State Government of Telangana had issued guidelines vide G.O.Ms.No.50 Revenue (JA) & (LA) Department dt.19-12-2014 under the new Land acquisition Law (

the 2013 Act) and copy of the same has been filed along with the counter affidavit dt.17-07-2015 of Dr.K.Ilambarthi, the District Collector, Khammam District. Except stating that proposals for acquisition were sent by the Executive Engineer, I.B. Division, Khammam, to the District Collector, Khammam on 15-07-2014 to acquire the petitioners' land which were resubmitted on 02-04-2015, nothing has been done by any of respondents to notify the land of petitioners for acquisition and paying them compensation even after guidelines were issued on 19-12-2014 vide G.O.Ms.No.50.

ACTION OF RESPONDENTS IN TRYING TO GET LAND SURVEYED INEXPLICABLE AND BIZARRE

-

21. In spite of the fact that the extent of the land of the petitioners is specifically indicated in the order dt.07-06-2013 in the Writ Petition, curiously in para-6 of the counter affidavit dt.22-01-2015 of Sri PVA Prasad, Executive Engineer, Khammam District and in page-14 of the counter affidavit dt.06-07-2015 of his successor Sri Ch.Chitti Rao, it is stated that the land of the petitioner is under submergence in the Yedulla Cheruvu Tank and it was not possible to conduct any survey of the said land. Why such a survey is warranted at this point of time when the land admeasuring Acs.14.00 cts of the petitioners in Sy.No.143/5 was taken by the respondents in 1976 for formation of Yedulla Cheruvu tank and has been under submergence since then, is not explained. This indicates a total callousness and non-application of mind on the part of the respondents.

THE COUNTER OF THE 7TH RESPONDENT

22. Shockingly in the counter affidavit filed by Dr.K.Ilambarthi, I.A.S., the District Collector, Khammam filed on 17-07-2015 in para-3, it is stated that he came to know about the judgment in W.P.No.32502 of 2010 pronounced on 07-06-2013 only on 16-07-2014, although the said Writ Petition was decided after hearing the learned Government Pleader for Irrigation and the District Collector, Khammam was a party to the said Writ Petition. An order passed in presence of the Government Pleader is deemed to be within the knowledge of all respondents who are Government servants and no excuse of this nature can be pleaded. In fact, Sri I.Srinvias Sri Naresh, I.A.S., the predecessor of Dr.K.Ilambarthi, (who filed C.A.No.562 of 2015 to dispense with his personal appearance) has not denied knowledge of the order passed by this Court in W.P.No.32502 of 2010 in the affidavit filed by him along with the said application. Also after a Writ Petition is allowed, copy of the order passed therein would be dispatched to all the respondents by the High Court and the plea of Dr. K.Ilambarthi, I.A.S. that his office did not have knowledge of it till 16-07-2014 cannot be accepted. Also the said official, having come to know on 16-07-2014 about the order passed by this Court, filed a Review Petition No.31367 of 2015 to review the order dt.07-06-2013 passed in the W.P.No.32502 of 2010 only on 21-07-2015, one year later. As stated above, the said Review Petition was rejected on 17-08-2015 with costs holding that the filing of the Review cannot be said to be *bona fide.* All the contentions raised by Dr. K.Ilambarthi, I.A.S. in his counter affidavit dt.17-07-2015 in the Contempt Case have been answered while rejecting the Review Petition. Therefore I do not deem it necessary to again advert to them.

23. This court is therefore convinced beyond doubt that the respondents were giving frivolous and irrelevant excuses for non-implementation of the order dt.07-06-2013 passed in the Writ Petition.

CORRECTNESS OF ORDER PASSED IN WRIT PETITION CANNOT BE CANVASSED IN THE CONTEMPT CASE

-

24. A feeble attempt was also made by learned Government Pleader to point out that this Court probably committed an error in allowing the Writ Petition filed by the deceased 1st petitioner by referring to the grounds urged in the Rev.W.P.M.P.No.31367 of 2015. This cannot be countenanced.

25. In **T.R. Dhananjaya v. J. Vasudevan**[2], such attempts by respondents were deprecated by the Supreme Court. It held:

> *"10. When this order was passed, what remained for the respondent was only implementation of the order passed by this Court in furtherance of the action taken thereunder by the Corporation. It is now clear that instead of implementing the order, an attempt has been made to circumvent the same and deny the benefits to the petitioner. As stated earlier, the petitioner is a Corporation employee and the stand of the Government appears to be to give benefit to their employees. So, an attempt has now been made to get into the rule position and to find whether the petitioner is eligible to be considered for promotion to the post of Executive Engineer, Superintending Engineer and Chief Engineer. It is now stated that according to the rules the petitioner would be eligible only as Superintending Engineer and not as Chief Engineer. When direction was given in IA No. 3 of 1993, the Government was a party to the proceedings and it was never brought to our notice that the petitioner was not eligible. On the other hand, the Division Bench of the Karnataka High Court upheld the right of the petitioner which became final.*
>
> *11. Question is whether it is open to the respondent to take at this stage this volte-face step. It is seen that all through the Government was a party. When the direction was given in IA No. 3 filed by the petitioner, it was not brought to our notice that the petitioner was not eligible for promotion, in contradistinction with Dasegowda, or any other. When the claim inter se had been*

adjudicated and the claim of the petitioner had become final and that of Dasegowda was negatived, it is no longer open to the Government to go behind the orders and truncate the effect of the orders passed by this Court by hovering over the rules to get round the result, to legitimise legal alibi to circumvent the orders passed by this Court. Thus, it is clear that the officers concerned have deliberately made concerted effort to disobey the orders passed by this Court to deny the benefits to the petitioner. So, we are left with no option but to hold that the respondent has deliberately and wilfully, with an intention to defeat the orders of this Court, passed the impugned order."(emphasis supplied)

26. This was reiterated in **Prithawi Nath Ram v. State of Jharkhand**[3]. It declared:

"8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt." (emphasis supplied)

THE NATURE OF THE JURISDICTION OF HIGH COURT IN CONTEMPT CASES

-

27. In **Supreme Court Bar Association v. Union of India**[4], the Supreme Court made the following observations with regard to the Contempt Jurisdiction of the High Courts and the Supreme Court:

"42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely effects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely effects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining 'the jury, the Judge and the hangman' and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual

Judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemnor and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice." (emphasis supplied)

28. Recently in **Subrata Roy Sahara v. Union of India**[5], the Supreme Court of India held that disobedience of orders of a court strikes at the very root of the rule of law on which the judicial system rests. Judicial orders are bound to be obeyed at all costs, howsoever grave the effect may be. Judicial orders cannot be permitted to be circumvented. In exercise of the contempt jurisdiction, courts have the power to enforce compliance with judicial orders, and also, the power to punish for contempt.

DISOBEDIENCE OF COURT ORDERS CAN BE BY POSITIVE OR ACTIVE CONTRIBUTION OR BY NON-OBEDIENCE/ PASSIVE AND DORMANT CONDUCT

29. It is settled law that willful disobedience of an order of the Court can occur not only by positive acts of disobedience but also by surreptitious acts.

30. In **Maninderjit Singh Bitta v. Union of India**[6] the width of jurisdiction of the Contempt jurisdiction was explained by it wherein it had observed:

"26. It is also of some relevance to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain

true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs (refer T.N. Godavarman Thirumulpad (102) v. Ashok Khot[7], SCC p. 6, para 5)…"

31. This was reiterated in **State of M.P. v. Suresh Narayan Vijayvargiya**[8] wherein it's earlier ratio in **Mohd. Aslam v. Union of India**[9] (that circumvention of an order can be by "positive acts of violation" or "surreptitious and indirect aids") was followed.

32. Thus the following continuous and recalcitrant attitude of the respondents:

(i) firstly by taking no action from 07-06-2013, when the W.P. was allowed, till end of December, 2013;

(ii) next, by pleading lack of guidelines under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (which came into effect from 1.1.2014) without stating how the absence of such guidelines prevented or disabled the respondents from implementing the orders passed by this Court;

(iii) expressing difficulties in survey of the land on account of submergence, which survey was wholly unnecessary and unwarranted;

(iv) promising to implement the orders of the Court repeatedly in their counters (other than the one filed by Dr.K.Ilambarthi) , but doing nothing till date;

(v) and lastly the volte face by Dr.K.Ilambarthi and all respondents in the Review Petition casting doubts on the ownership of the land in question by petitioners and making allegations of fraud against petitioners without any basis, which has been rejected in

the Review petition; cumulatively establish the surreptitious and indirect attempts to scuttle the implementation of the Court orders even though more than two years have passed since the W.P was allowed. These acts amount the deliberate and wilful violation of the orders passed by this Court in W.P.

32. The judgment in **Niaz Mohd. Others** (1 supra) cited by Special Government pleader no doubt lays down that if there are compelling circumstances disabling a respondent from implementing an order of a Court, then the court cannot hold that there is a willful disobedience. In the present case no such compelling circumstances exist for not implementing the order dt.07-06-2013 in W.P.No.32502 of 2010.

33. In **State of Bihar v. Sonabati Kumari**[10], the Court had emphasised the duty of the State and it's officials to obey the orders passed by the Court in the following terms:

> "*It is of the essence of the rule of law that every authority within the State including the executive Government should consider itself bound by and obey the Law. It is fundamental to the system of polity that India has adopted and which is embodied in the Constitution that the Courts of the land are vested with the powers of interpreting the law and of applying it to the facts of the cases which are properly brought before them. If any party to the proceedings considers that any Court has committed any error, in the understanding of the law or in its application, resort must be had to such review or appeals as the law provides. When once an order has been passed which the Court has jurisdiction to pass, it is the duty of all persons bound by it to obey the order so long as it stands, and it would tend to the subversion of orderly administration and civil Government, if parties could disobey orders with impunity. If such is the position as regard private parties, the duty to obey is all the more imperative in the case of Governmental authorities, otherwise there would be a conflict between one branch of the State polity viz. the executive and another branch — the Judicial. If disobedience could go unchecked, it would result in orders of Courts ceasing to have any meaning and judicial power itself becoming a mockery. When the State Government obeys a law, or gives effect to an order of a Court passed against it, it is not doing anything which detracts from its dignity, but rather, invests the*

law and the Courts with the dignity which are their due, which enhances the prestige of the executive Government itself, in a democratic set-up. We consider that on the facts of this case there was no justification, legal or otherwise for the State Government to have rushed the notification under Section 3(1), when its application to modify or vacate the order for interim injunction was pending before the Subordinate Court. But more than that, when possibly by failure to appreciate their error, the notification had been published, and the propriety and legality of its action was brought up before the Court by an application under Order 39 Rule 2(3), the attitude taken up by the State Government and persisted in upto hearing before us, has been one which we can hardly commend. If the Government had deliberately intended to disobey the order of the Court, because for any reason they considered it wrong, their conduct deserves the severest condemnation. If on the other hand it was merely a case of inadvertence and arose out of error, nothing would have been lost and there was everything to be gained, even in the matter of the prestige of the Government, by a frank avowal of the error committed by them and an expression of regret for the lapse, and it is lamentable that even at the stage of the hearing before us, there was no trace of any such attitude." (emphasis supplied)

34. These observations aptly apply to the present case. At no stage was any remorse expressed by any of the respondents and in fact, as mentioned above, an attempt was made to get the Contempt case adjourned indefinitely on the plea that a Writ Appeal challenging the judgment in the Writ Petition (filed more than 2 years after it was allowed) was pending. This conduct is highly deprecated.

WHO IS LIABLE TO BE PUNISHED AND WHAT IS THE PUNISHMENT TO BE IMPOSED

35. The question now arises who is to be punished for contempt of the order dt.07-06-2013 in W.P.No.32502 of 2010.

36. In the counter-affidavit dt.06-07-2015 filed by Sri Ch. Chitti Rao, Executive Engineer, Irrigation Division, Khammam, he has set out in para.2 which officer was holding the posts of (i) Principal Secretary to Government, Irrigation and C.A.D. Department,

Secretariat, Hyderabad, (ii) Engineer-in-Chief, Irrigation Department, Errummanzil, Andhra Pradesh, Hyderabad, (iii) Chief Engineer, I & CADD, Minor Irrigation, Errummanzil, (iv) Superintending Engineer, I & CADD, Irrigation Circle, Warangal, (v) Executive Engineer, I & CADD Irrigation Circle, Warangal and (vi) Dy. Executive Engineer, I.B., Sub-Division, Sattupalli, Khammam District, who were shown as respondents in the Writ Petition.

37. Sri V. Nagi Reddy, 1st respondent, had also filed an application C.A.No.685 of 2015 stating that he worked as Secretary to the Government of Telangana in the I and CAD Department only from 07-03-2014 to 02-06-2014, that thereafter he was Principal Secretary to Government, Finance Department from 02-06-2014 to 14-04-2015 and that he took voluntary retirement on 15-04-2015 and is employed as Election Commissioner for the State of Telangana and so he may also be discharged from the contempt proceedings. He pointed out that Sri Shailendrakumar Joshi is the Principal Secretary to the Government, I & CAD Department, State of Telangana and his name may be included in his place in the Contempt Case. Since this respondent was employed in the I & CAD Department for a very brief period from 07-03-2014 to 01-06-2014 and since he alleged that he was only looking after budget and service matters and not land acquisition subjects, and this is not denied by the petitioners, he cannot be punished for contempt. Therefore, C.A.No.685 of 2015 is allowed.

38. The 2nd respondent Sri L. Narayan Reddy has filed C.A.No.699 of 2015 stating that as on 07-06-2013 he was posted

as Engineer-in-Chief (Admin.), I & CAD Department for the combined State of Andhra Pradesh up to 01-06-2014; that he was posted as Engineer-in-Chief (Admin.), I & CAD Department for the State of Telangana from 02-06-2014 to 31-07-2014; as Engineer-in-Chief (Admin.), he is not at all connected with the land acquisition proceedings; and he is working as Director General, Water and Land Management Training and Research Institute (WALANTARI), Hyderabad from 31-07-2014 till date. In support of the above, he also filed document posting him as Engineer-in-Chief (Admin.) Wing. This is not disputed by counsel for the petitioners. Therefore, he cannot be punished for non-implementation of the order dt.07-06-2013 in W.P.No.32502 of 2010. Consequently, C.A.No.699 of 2015 is allowed.

39. There is no dispute that Sri Pingali Satish and Sri Nazeer Ahmed, shown as respondent nos.4 and 5 in the contempt case, were actually employed in R & B Department of the State of Telangana and not in the Irrigation Department and they have nothing to do with the implementation of the order dt.07-06-2013 in W.P.No.32502 of 2010. Therefore, they cannot be held liable for non-implementation of the above order and are entitled to be exonerated. Consequently, C.A.Nos.990 and 991 of 2015 filed by them are allowed, and they are discharged.

40. The post of the Executive Engineer, Irrigation Division, Khammam was held from 07-06-2013 to 04-12-2014 by Sri PVA Prasad and from 05-12-2014 till date by Sri Ch. Chitti Rao. The counter of Sri Ch. Chitti Rao, Executive Engineer, Irrigation Division, Khammam on behalf of respondent Nos.1 to 6 indicates that even though Sri PVA Prasad directed the Deputy Executive Engineer (6th respondent) on 22-07-2013 to submit a detailed

report, the latter did not respond even though five reminders were issued to the latter on 03-09-2013, 27-09-2013, 05-11-2013, 18-12-2013, 22-02-2014 and 15-07-2014. Only on 15-07-2014, the Deputy Executive Engineer submitted land acquisition proposals to the District Collector, Khammam which were returned by the latter on 27-01-2015 requesting fresh proposals to be submitted as per the 2013 Act. Sri Ch. Chitti Rao got submitted proposals afresh to the District Collector on 02-04-2015 for acquisition of the land of the petitioners.

41. In the counter affidavit dt.06-07-2015 filed by Sri Ch. Chitti Rao on behalf of himself and respondent Nos.1 to 6, he states that the post of Deputy Executive Engineer, IB Division, Sattupalli, Khammam District was held by Sri S.Srinivasa Reddy (6th respondent) from
07-06-2013 till date. It is this official S.Srinivasa Reddy, who did not respond to the several reminders sent to him by Sri PVA Prasad. The said counter also refers to Deputy Executive Engineer's inspection of the site for conducting survey of lands and he was the one who pleaded that the lands are submerged on account of presence of water in the Edulacheruvu tank till April 2014. As pointed out above, the whole exercise of survey was unwarranted and appears to be a pretext or ruse to justify the delay in implementing the orders passed by this Court. Therefore, he is held guilty of willful disobedience of the order passed by this Court and sentenced to suffer four weeks simple imprisonment and also a fine of Rs.1,500/- (Rupees One Thousand and Five Hundred only).

42. The post of the District Collector (7th respondent) up to
31-07-2014 was held by Sri I. Srinivas Sri Naresh and it appears

that he was transferred from the said post and posted as Commissioner, Prohibition and Excise Department, Andhra Pradesh. On his transfer, Dr. K. Ilambarthi took charge as District Collector, Khammam from 01-08-2014 onwards and is holding the post till the hearing of the contempt case was completed. Since the first proposals for land acquisition were sent by Sri Ch.Chitti Rao, Executive Engineer to the District Collector only on 15.7.2014, Sri I. Srinivas Sri Naresh cannot be held guilty of contempt since he was transferred on 31.7.2014.

43. In para-19 above, I have already dealt with the counter affidavit filed by Dr.K.Ilambarthi, I.A.S., the District Collector, Khammam. Assuming that he came to know on 16-07-2014 about the order passed by this Court, he filed a Review Petition No.31367 of 2015 (to review the order dt.07-06-2013 passed in the W.P.No.32502 of 2010) only on 21-07-2015, one year later. The volte face by him in the Review Petition casting doubts on the ownership of the land in question by petitioners and making allegations of fraud against petitioners without any basis have also been discussed in my order dt.17.8.2015 dismissing the Review petition.

44. In my considered opinion Dr.K.Ilambarithi, S/o.R.Kunjitha Patham, who was the District Collector, Khammam from 01-08-2014 till the hearing of the Contempt Case **and who had filed counter-affidavit in the Contempt Case for the 7th respondent (District Collector, Khammam)**, is clearly guilty of willful disobedience of the order dt.07-06-2013 in W.P.No.32502 of 2010. As a successor in office to his predecessor from 1.8.2014, it was his duty to implement the order of this Court and in my opinion, he willfully and deliberately, did not do so.

45. The unconditional apology mentioned in para-22 of his counter-affidavit cannot be accepted since the stand taken by him in the counter-affidavit has already been rejected not only in the Review Petition but also in this Contempt Case and his action is clearly *malafide.* In this view of the matter, he is liable to be punished with simple imprisonment for a period of four (04) weeks along with fine of Rs.1,500/- (Rupees One Thousand and Five Hundred only).

46. The Contempt Case is therefore allowed in part and Sri S.Srinivas Reddy, Dy. Executive Engineer, I.B. Sub-Division, Sattupalli, Khammam District and Dr.K.Ilambarithi, S/o.R.Kunjitha Patham, who was the District Collector, Khammam from 01-08-2014 till the hearing of the Contempt Case, are both liable to be punished for Contempt of Court as set out above. However, the sentence of imprisonment imposed on both of them is suspended for a period of four (04) weeks from today. The 2nd petitioner shall deposit subsistence allowance @ Rs.400/- (Rupees Four Hundred only) per day for each of the above named two contemnors within a period of four (04) weeks from today.

47. C.A.Nos.685 of 2015, 699 of 2015, 990 of 2015 and 991 of 2015 are also allowed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 29-09-2015
Vsv/*

[1] AIR 1995 S.C. 308
[2] (1995) 5 SCC 619

[3] (2004) 7 SCC 261

[4] (1998)4 SCC 409

[5] (2014) 8 SCC 470

[6] (2012) 1 SCC 273

[7] (2006)5 SCC 1

[8] (2014) 11 SCC 694

[9] (1994) 6 SCC 442

[10] AIR 1961 SC 221