

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1563 of 1995

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1. STATE OF BIHAR, THROUGH SECRETARY, WATER RESOURCES
DEPARTMENT, GOVERNMENT OF BIHAR, PATNA.
2. THE EXECUTIVE ENGINEER, PUNPOON FLOOD PROTECTION
DIVISION, WATER RESOURCES DEPARTMENT, BIHAR, PATNA.
..... PETITIONER/S

VERSUS

BALRAM SINGH, SON OF LATE SAKALDEEP SINGH, RESIDENT OF
MOHALLA-YARPUR, POLICE STATION GARDANIBAGH, DISTRICT-
PATNA.
..... RESPONDENT/S

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Appearance:

For the State of Bihar : Mr. Shyam Kishore Sharma, G.A.-1
Mrs. Shalini Raut, AC to G.A.-1.
For contemnor : Mr. ASHOK KR.SINHA, Adv.
Mr. Shyam Sundar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 29-06-2016

Heard learned G.A.-1 as well as learned Shri Ashok Kumar Sinha assisted by Shyam Sundar Pandey learned counsel representing the contemnors. Instant MJC has been taken up at the behest of State of Bihar and others on the ground that an undertaking given by the petitioners under Cr. Misc. No.9323 of 1993 has been violated, therefore, he is to be prosecuted and punished under contempt of Court Act.

2. For better appreciation, the order dated 03.09.1993 passed in Cr. Misc. No.9323 of 1993 is quoted below:

“3.9.1993 – Heard counsel for the parties.

2. It appears that the parties do not have anything against each other, because each one of them is claiming right in different properties altogether. The petitioner claims that there is an old temple, which is leaking on account of rain, and the petitioner only wishes to carry out



repairs in the old temple. Counsel for the State submitted that the order passed by the Magistrate has not concern whatsoever with the old temple. The order has been passed with a view to prevent the construction of a new temple across the road, which is almost opposite to the old temple.

3. This application is, therefore, disposed of with the observation that the order of the learned Magistrate will not affect the right of the petitioner to go and worship in the old temple, and to carry out repairs in the old temple to prevent leakage etc., counsel for the State further submits that the State has no objection to anyone worshipping in the old temple, which is in existence there for many years. However, neither the petitioner nor anyone else will be permitted to raise any new construction” to raise any new construction across the land almost opposite to the old temple, because according to the State, on public land a temple is sought to be constructed by encroaching upon the public land. He further states that a land encroachment proceeding is also pending in respect of the land encroached upon.

4. The opposite parties will see to it that so far as the old temple is concerned, the devotees are not prevented from going and worshipping in the old temple.

5. This application is disposed of.”

3. It is evident from the aforesaid order that one temple was existing since before at one side of road while another temple was being erected over a government land, with regard thereto

certain litigation cropped up which, as is evident sailed up to this Court.

4. It is further evident that while considering the prayer of the petitioner to allow him to repair to prevent the temple from natural delay , the court had granted permission with a condition that neither petitioner nor anyone else will be permitted to raise any new construction across the road almost opposite to the old temple. During course of consideration of the prayer made on behalf of State for initiation of contempt proceeding, vide order dated 22.04.1996 this Court had directed Chief Judicial Magistrate to make physical verification and to report which has been communicated vide letter no.1113 dated 18.05.1996 and from perusal of the said report it is evident that existence of old temple has not been traced out. The aforesaid incidence had been taken note of as is evident from order dated 21.05.1996 and then, thereafter, the court had directed the Registrar General to make thorough physical inspection and submit a report which is available on the record at Flag-b, dated 26.06.1996. After going through the report it is evident that Registrar General had not found two temples lying in front of each other across the road rather he had found only one temple though newly constructed on the northern side of the road. However, one double storied building was found on the other side of the road having a plate affixed containing "Maa Kali Mandir". The Registrar General had visited inner side of the building and further had not found idol installed nor found sign of worship having been carried out rather one was



found which was painted as goddess Kali. At other place an idol was found kept. The above space, as per opinion of the Registrar General resembles a sanctuary not conclusively. Furthermore, nothing has been reported at the end of the Registrar General that anybody was engaged in construction of the temple. The report is also silent divulging approximate age of the building. Not only this, there happens to be no evidence on record that the presence of building was before passing of the order dated 03.09.1993, or was constructed after passing of the order dated 03.09.1993. As the matter relates with violation of the order dated 03.09.1993, then in that event there should have been conclusive evidence regarding construction of the building after order dated 03.09.1993. Unless and until, there happens to be cogent and reliable evidence disclosing construction of building after passing of order dated 03.09.1993, the opposite party could not be prosecuted and held guilty therefor.

5. From the report submitted by the Registrar General did not speak authentically that old temple was existing at other side of the road, rather double story building was there, which was disclosed by the Chief Engineer to be old temple which has been controverted by the contemnor and further having complete absence of sign of worship, having idol properly installed, and in likewise manner, having complete silence regarding inner condition of so alleged really constructed temple, make the situation more complexed.

6. However, ignoring the objective finding of the report,

as the report suggest that an inference could be drawn, whereupon instant proceeding has been admitted, subsequently thereof, the contemnor has been given liberty to proceed in his defence whereunder examined so many witnesses.

7. While perceiving the aforesaid eventualities, the relevant portion of the order speaks as follows:

“In such circumstances, prima facie, I feel satisfied that there has been violation of the aforesaid order of this Court by the opposite party. Accordingly, a proceeding in contempt is initiated against him.”

8. Though, while admitting, there was prima facie satisfaction. For proper adjudication, when the report submitted by the Registrar General, which happens to be the sole basis for admission has been properly gone through, it is evident that it did not divulge the situation which could justify the proceeding on account of complete silence whether the alleged newly constructed temple was constructed after order dated 03.09.1993, nor substantiated the same. That being so, a reasonable doubt crept in whereupon instant proceeding is fit to be dropped, and is accordingly stopped.

(Aditya Kumar Trivedi, J.)

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