

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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CONTEMPT CASE No.1882 of 2015

Between:

Bathina Prabhakara Rao

....Petitioner

and

Mr.Aditya Nath Das,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 27.12.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : No

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CONTEMPT CASE No.1882 of 2015

ORDER:

This Contempt Case is filed alleging violation of the order in W.P.M.P.No.19090 of 2015 in W.P.No.14643 of 2015, dated 12.06.2015.

The petitioner was running a small shop by the side of the premises of the Office of the Executive Engineer, Vijayawada, on granting permission vide Memo No.732H, dated 27.09.1995. He has been selling fruit juices and eking out his livelihood. His son is a mentally handicapped person and the entire family is dependent on his income. While so on 12.05.2015, the fourth respondent along with his staff came to the shop of the petitioner and threatened to demolish the fruit juice centre highhandedly. Since no notice was issued and no action was taken according to law, the petitioner approached this Court challenging the action of the respondents in trying to interfere and demolish the shop "Pushkal Fruit Juice" situated adjacent to the Office of the Executive Engineer, Irrigation Department, Ramachandra Rao Road (Nakkal Road), Governorpet, Vijayawada, Krishna District.

This Court, while issuing notice before admission on 14.05.2015 and posting the case to 11.06.2015, directed the respondents not to dispossess the petitioner except in accordance with law. The said order was extended on

12.06.2015 until further orders. Alleging violation of the said order, the present Contempt Case is filed.

No counter affidavit was filed even after issuing notice in the Contempt Case. The case was admitted against the fifth respondent and he was present in person on 04.01.2016. After going through the counter affidavit filed by the fourth respondent, who stated that he was acting on the instructions of the third respondent, the third respondent was asked to appear before this Court and when he did not appear, a bailable warrant was issued on 01.02.2016. Pursuant to the said bailable warrant, he appeared on 22.02.2016. Though he filed the counter affidavit, it did not give the details with regard to the implementation of the orders of this Court and he was asked to file additional counter affidavit. After filing the Contempt Case, the respondents filed W.V.M.P.No.620 of 2016 and the same along with the Writ Petition was also posted along with the present Contempt Case after obtaining the orders of the Hon'ble the Acting Chief Justice. By the time of consideration of the W.V.M.P, the shop was also demolished and the petitioner was evicted on 21.09.2015. In view of the same, the Writ Petition itself was closed on 11.11.2016, but keeping the present Contempt Case for consideration separately.

The counter affidavit of the third respondent – Executive Engineer, states that the then Executive Engineer, Krishna

Central Division, Vijayawada, granted lease of the irrigation land admeasuring 30 square yards to the petitioner on 27.09.1995 for running the buddy shop situated between the main gate of the Irrigation Department office premises and Sri Nagendra Swamy Temple for a period of one year and the lease period expired by 30.09.1996. The lease was granted subject to certain conditions. It was renewed up to September, 1998. When the lease expired, notices were issued in 1999 and 2001 to the petitioner to vacate the said site in order to enable the Municipal Corporation to raise plantation under Clean and Green Programme. After bifurcation of the State, the Irrigation Guest House, Vijayawada, was earmarked as the Camp Office of the Hon'ble Chief Minister of Andhra Pradesh by Memo dated 18.05.2015. In view of the same, the security people asked the Irrigation Department to take over the site. A notice was served on the petitioner on 22.08.2015 to vacate the land occupied by him within fifteen days as the Department required the said land for the departmental needs and the said notice was issued as per the instructions of the higher authorities. The Tahsildar, Vijayawada Urban, was addressed to extend cooperation to take necessary action for removal of the encroachments. Further, as per the directions of this Court, dated 14.05.2015, notices were issued to the petitioner in accordance with law. The Executive Engineer, KC Division, had also issued eviction notice on 22.08.2015 to the petitioner to vacate the land within fifteen days. He addressed a letter to the Commissioner, Municipal

Corporation, Vijayawada, for cooperation and for arranging to remove the encroachments by the petitioner. Similar letters were addressed to the Sub Collector, Vijayawada, and Commissioner of Police, Vijayawada seeking their cooperation. But, the eviction date was postponed due to some reasons. Subsequently on 21.09.2015 at the request of the Executive Engineer, KC Division, the Municipal Authorities lead by City Planner in the presence of the Police, Revenue and Irrigation Officials removed the encroachments and took over the land. Panchanama was also conducted by the Revenue Department. The entire eviction process was videographed in the presence of the above departments. The unauthorized construction was dismantled and removed by the municipal authorities. The articles in the shop which were not claimed and taken back by the shop owner were kept in the custody of the Executive Engineer, KC Division, Vijayawada. The department had followed the rules in removing the encroachments by serving the eviction notice on the petitioner and giving more than 30 days time to vacate the site. But, the petitioner had not responded.

The above counter affidavit is followed by an additional counter affidavit of the third respondent stating that in view of his orders, the municipal authorities lead by City Planner in the presence of the Police, Revenue and Irrigation Officials removed the encroachment on 21.09.2015 and the land was taken over by the Department. A panchanama was also conducted by the Revenue Department. He relied on paragraphs 27 and 28 of the

Andhra Pradesh Public Works Department Code in support of his stand that the Executive Engineer is responsible for removal of the encroachments. He further stated that in pursuance of the interim direction of this Court, sufficient notice was given to the petitioner and when there was no response from the petitioner, the unauthorized occupation was determined as encroachment and he was evicted in accordance with the procedure.

The fourth respondent, who is the Deputy Executive Engineer, stated that he cannot take any decision over eviction of any encroachment, as he is not competent. The Executive Engineer, KC Division, is the custodian of the departmental properties. The petitioner was evicted on 21.09.2015 with the assistance of the Municipal, Police and Revenue authorities.

The fifth respondent, who is the Assistant Executive Engineer, stated that he served the notice dated 21.08.2015 to the petitioner to vacate the land occupied by him within fifteen days.

In view of the above averments, the only point that survives for consideration is whether the order of this Court dated 14.05.2015 as extended on 12.06.2015 was violated or not.

As stated above, this Court directed that the petitioner shall not be dispossessed from the subject property, except in

accordance with law and the said order was extended on 12.06.2015 until further orders. It appears that the eviction notice signed by the Assistant Executive Engineer dated 21.08.2015 was served on the petitioner. After receipt of the said notice, the petitioner filed W.P.M.P.No.35406 of 2015 in W.P.No.14643 of 2015 on 25.08.2015 seeking suspension of the said notice. The petitioner submitted a reply on 01.09.2015 stating that the Writ Petition is pending in this Court, but he did not show any reason for his continuance. No orders were passed in W.P.M.P.No.35406 of 2015. The third respondent, in his notice dated 22.08.2015, stated that the notice was being issued in accordance with the orders of this Court in W.P.No.14643 of 2015 and asked the petitioner to vacate the site within fifteen days. The third respondent had addressed a letter on 04.09.2015 to the Commissioner, Municipal Corporation, Vijayawada, seeking assistance for removing the encroachments on 06.09.2015. A copy of the same was marked to all the authorities. Ultimately, the petitioner was evicted on 21.09.2015 and the panchanama was conducted.

This Contempt Case was filed on 05.10.2015 and was admitted on 13.11.2015. As on the date of the admission of the present Contempt Case, no application seeking vacation of the order of this Court was filed by the respondents. The petition seeking vacation of the interim order was filed only much later in February 2016. In the normal circumstances, when this Court passes an order, whether the order is legal or illegal, it

has to be complied with and the authorities have no choice. If they have any case, they have to approach this Court by filing an appropriate application seeking vacation of the order. Even though this Court enabled the respondents to take action in accordance with law if they want to dispossess, when the respondents issued a notice on 21.08.2015 the petitioner brought to the notice of the authorities with regard to the pending case. But, he did not submit any explanation. In those circumstances, the authorities should have exercised caution and approached this Court for appropriate orders. On the other hand, the third respondent showed over enthusiasm and demolished the shop assuming that the issuance of notice itself was sufficient. The third respondent preempted the action of this Court by taking a decision on his own. In fact, the petitioner was made helpless. Though the third respondent is custodian of the properties of the department, he has to comply with the orders of this Court while implementing the law. However, the action of the third respondent cannot be said to be in willful violation, but an action of improper exercise of discretion and misunderstanding of the position. The petitioner also has to be blamed for not submitting the proper explanation to the notice issued by the third respondent on 21.08.2015. In any case, throwing away the articles on the road and demolition of the property was not indicated as the notice dated 21.08.2015 merely stated that if the shop was not vacated within fifteen days, action according to law would be taken. No

further notice was issued either for forceful eviction or for seizure of the property.

In the circumstances, the third respondent himself has to take the responsibility for the highhanded action. Since his action did not come within the four corners of the provisions of the Contempt of Courts Act, no action can be taken against him in this case.

The present Contempt Case is, accordingly, closed, giving liberty to the petitioner to take appropriate civil remedies for the highhanded action of the third respondent and the consequential damages caused to the petitioner.

27.12.2016
vs

(A.RAMALINGESWARA RAO, J)

