
Date of Decision:19.09.2016

Vs.

Mr. B.S. Rana, Senior Advocate with
Mr. Rajinder Singh Malik, Advocate
for the respondents.

RENU
2016.09.24 12:07
I attest to the accuracy and
authenticity of this document
Chandigarh

Counsel for the petitioner has submitted that the respondents started collecting bricks and other construction material on the land in dispute after the order of status-quo without seeking any modification therein and started raising construction. He made a complaint to the SHO, Police Station Kundli, but no action was then. Then he made a complaint to the Superintendent of Police on 2.7.2015. It is alleged that though the police visited the site but no action was taken on the ground that the matter involved was of the civil nature. Hence, the present petition has been filed.

During the course of hearing, following order was recorded by this Court on 25.7.2016:-

“This petition is filed for disobedience of the order dated 19.8.2002 whereby the parties were directed to maintain status-quo regarding the land in dispute.

“Counsel for the petitioner has submitted that at that time, the land was lying vacant. However, the respondents have allegedly starting raising construction after the order was passed, therefore, the present petition has been filed for proceeding against the respondents under the Contempt of Courts Act, 1971.

“On the other hand, the respondents in their reply have alleged that the photographs appended by the petitioner do not connect the construction to the land in question and it is also not proved that the said construction has been raised after the stay was granted. He has also submitted that in Annexures P.3 and P.4, the complaint made to the police authorities, the petitioner has admitted that the houses of the respondents were

already there on the land in question whereas according to the petitioner, the respondents have raised construction of the shops after the order was passed by this Court. In order to resolve the factual dispute, it is suggested by learned counsel for the petitioner to appoint a Local Commissioner to inspect the spot in order to verify as to whether the construction has been raised in the land in dispute recently. This suggestion is not opposed by counsel for the respondents. Accordingly, this Court appoints Ms. Gaganpreet Kaur, Advocate, as Local Commissioner to visit the spot and to report as to whether the construction has been raised by the respondents on the land in question after 19.8.2002. The petitioner may take the help in this regard from the concerned Tehsildar and also the concerned SHO by serving a notice of her visit to the place in question. The petitioner shall pay ₹33,000/- as fee of the Local Commissioner and ₹5,000/- towards expenses. In case, the contention of the petitioner is found to be correct by this Court, then this amount, now paid by the petitioner shall be paid by the respondents besides facing other liabilities which may incur because of the non-obedience of the order passed by this Court.

Adjourned to 22.8.2016.”

Apropos, the Local Commissioner has submitted her report which was taken on record on 22.8.2016. Counsel for the respondents has argued that the construction has been raised after the order of status-quo but it was a room and a toilet, within the premises owned by the respondents

and would not come within the definition of contempt. He also referred to Section 13 of the Contempt of Courts Act, 1971 to contend that the nature of violation has to be of substantial interference in the due course of justice.

On the other hand, counsel for the petitioner has submitted that the order of status-quo was passed in the appeal filed by the respondents which means the position existing on 19.8.2002 was to be maintained till further orders. It is contended that there is no modification in the order dated 19.8.2002 and no order was obtained by the respondents for the purpose of raising construction during the pendency of the appeal which was filed against the judgment and decree of the Appellate Court in which it has been held that the property in dispute is ancestral and unpartitioned. If property in dispute is ancestral and the collusive decree suffered in favour of respondents No.1 to 3 was held to be bad in law, the respondents were not in a position to take advantage from the said decree passed by the First Appellate Court and no order is passed by this Court in RSA staying the operation of the said decree. It is further submitted by counsel for the petitioner that if the respondents are allowed to violate the order passed by this Court, the way they have violated, there would be total lawlessness in the Society.

I have heard learned counsel for the parties and perused the record. In order to find out as to whether the respondents have raised construction, a Local Commissioner was appointed by this Court at the expense of the petitioner. It was mentioned categorically in the order dated 25.7.2016 that for the time being, the petitioner would pay the fee and expenses of the Local Commissioner but in case it is found that the

contention raised by the petitioner is correct then the amount which is paid by the petitioner shall be paid by the respondents, who would also face other liabilities which may incur because of the dis-obedience of the order passed by this Court. The learned senior counsel appearing on behalf of the respondents, during the course of hearing, has admitted that the respondents have raised construction but it is contended that the said construction has been raised within their premises. I am afraid this contention cannot be accepted because the property in dispute, which fell to the share of the respondents was by virtue of the collusive decree, which has been set aside by the First Appellate Court and the property in dispute is held to be ancestral and unpartitioned. The respondents cannot claim that they have raised construction in their own premises/ share. Moreover, this Court vide order dated 19.8.2002 specifically directed the parties, which includes the respondents, to maintain status -quo regarding the land in dispute meaning thereby nobody was to change the nature of the land as it was existing at the time of passing of the order on 19.8.2002 but the word used by the Court “till further orders” were to give liberty to both the parties to apply for modification of the order in future but none of the parties applied for the change in the order dated 19.8.2002 for the purpose of raising construction. The petitioner has followed the order dated 19.8.2002 in its letter and spirit as he did not commit any act to violate the said order but the respondents have admittedly raised construction without the permission of the Court which tantamounts to wilful disobedience of the order dated 19.8.2002 which attracts the penal provisions of the Act and is a substantial interference at their instance in the due course of justice. Accordingly, the

present petition is hereby allowed and the respondents are held guilty of committing contempt of the order of this Court by their wilful disobedience of the order dated 19.8.2002 and are convicted for three months simple imprisonment with ₹2,000/- as fine. The amount which was paid by the petitioner for appointment of the Local Commissioner is directed to be paid by the respondent- contemner to the petitioner as directed vide order dated 25.7.2016.

September 19, 2016
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No