

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2215 of 2009

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Bhubneshwar Singh, son of Late Khirodhar Singh, resident of Mohalla-Salempur
Dumra, Raja Bazar, P.S.-Shastri Nagar, Distt.-Patna

.... Petitioner

Versus

1. Ganesh Singh
2. Ramesh Singh

Both are sons of Late Nirmal Singh, resident of Village-Rastriya Ganj, P.S.-
Phulwarisharif, District-Patna

3. Sri B. Senthil Kumar, the Commissioner, Patna Municipal Corporation, Patna
Regional Development Authority (Dissolved).
4. Arvind Prasad, the Executive Engineer, Division 'C', Patna Municipal Corporation,
PRDA (Dissolved), Patna
5. Sri Baijnath Das, the Dy. Secretary, P.M.C. , P.R.D.A. (Dissolved), Patna
6. Md. Tasum, son of Haji Md. Makhan, R/O R.K. Plaza, Mewasao Lane New Zakir
Hussain School, Sultanganj (P.S.) District-Patna, the Managing Director, M/S.
Rehanam Construction Pvt. Ltd., 314 Ashoka Palace, Exhibition Road, Gandhi
Maidan (P.S.), District-Patna.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Sanjay Kumar Mishra, Advocate

For the P.M.C.
(Opp. Parties No.3 to 5) : Mr. Yashraj Bardhan, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV JUDGMENT

Date: 01-07-2017

In the present application, attention of this Court has been
drawn to the interim injunction issued by this Court in I.A. No.582
of 2005 passed in F.A. No.425 of 1991, wherein by order dated
24.08.2006, this Court had injuncted all the parties in the following
terms :

*“Law is well settled that once a lis has
been admitted for final adjudication, it becomes
the duty of the court to preserve the subject matter*



of the litigation by an appropriate order so that the same is available at the time of final adjudication and the decree does not become a barren one. All the parties are hereby prohibited by an order of injunction from alienating, disposing, encumbering or changing the nature, character or user of the suit property until further orders of this Court.”

Thus, all the parties had been prohibited by an order of injunction from alienating, disposing, encumbering or changing the nature, character or user of the property until further order of this Court.

2. Mr. Ganpati Trivedi, learned Senior Counsel appearing for the petitioner submits that despite the aforementioned order passed in First Appeal No.425 of 1991, on 05.09.2007, in blatant disregard of the same, a development agreement (Annexure 9) was executed between O.P. Nos.1, 2 and 6 and construction upon the part of the suit land (Plot No.1058) was started. During the pendency of the appeal, the opposite parties also presented the plan for construction.

3. On 20.02.2009, the petitioner served his representation before the Police Officer as well as the Opposite Parties No.3-5 (official respondents) and raised an objection against them in Plan Case No.499 of 2007, by informing them about the entire facts as well as the order of injunction passed by this Court. However,



despite the objection having been filed and in wilful disobedience of the order of injunction, the Patna Municipal Corporation, vide its order dated 31.03.2009, had approved Plan Case No.499 of 2007. Learned counsel for the petitioner further submitted that vide order dated 14.05.2009 passed in I.A. No.6840 of 2007 (in F.A. No.425 of 1991), Shri Ganesh Singh (O.P. No.1 herein) was permitted only to negotiate transfer of the aforesaid land in favour of the builder with a condition that before finalizing such transfer, he must furnish to this Court, the terms on which the land is sought to be transferred to the builder on affidavit and that of the builder as well. It was further ordered that this Court shall pass further orders as to how the property shall be dealt with and proceeds received from the builders.

4. On 18.05.2009, the opposite parties executed an agreement (Annexure 6) in the light of the order dated 14.05.2009, wherein it was stated that *“this agreement shall not adversely affect the earlier registered agreement executed between the parties,”* thus, making the subsequent agreement and the undertaking given to this Court a mere eyewash.

5. The petitioner herein applied for an information under the Right to Information Act from the City S.P., Patna, who annexed a report submitted by the Dy.S.P., Patna (Annexure C of



Annexure 4), who had confirmed after physical verification of the land in question that the construction was going on the premises, vide his Memo No.2140 dated 14.06.2009. It is also stated therein that there have been instances of use of firearms over the property, for which Shastri Nager P.S. Case No.232/04 dated 29.03.2004 had been filed. Thus, according to the petitioner, the opposite parties had willfully disobeyed the order dated 24.08.2006 passed in F.A. No.425 of 1991.

6. Learned counsel for the petitioner submitted that I.A. No.3399 of 2009 in F.A. No.425 of 1991 was also filed by the opposite parties, which was disposed of vide order dated 27.11.2009 and the terms for negotiation was said to be confirmed. This Court, vide order dated 27.11.2009, ratified the agreement between the parties and held as such:

“I.A. No.3399 of 2009

I.A. No.3399 of 2009 has been filed by respondent no.10A/2, which is pursuant to order dated 14.05.2009 passed in this case earlier.

It appears that 20 decimals of land pertaining to Plot No.1058, Khata No.205 has been finally allotted to the share of this respondent. He had filed an application being I.A. No.4840 of 2007 for permission to alienate the said land, in view of the injunction granted by this Court against



alienation earlier. This Court having appreciated the facts and circumstances by order dated 14.05.2009 granted permission to this respondent to negotiate with builder for transfer of the land aforesaid and bring the agreement on record, whereafter the Court would pass how the matter would be dealt with. Thus, permission to alienate was in principle already granted.

The present interlocutory application brings on record the agreement. The appellants have filed a counter affidavit that in fact the negotiation for agreement had already been done prior to the last order passed by this Court dated 14.05.2009, otherwise there appears to be no other objections.

In my view, the appellant's objection is for objection for the sake, which is to be noted for rejected. Once, this Court had permitted alienation all that become academic.

By the agreement, as appended to this interlocutory application, in sum and substance, what has been brought down is that the said respondent has received Rs.6 lacs in cash and 40% of the total build up area. Thus, the total consideration in respect of this deal would be the 40% build up area and the Rs.6 lacs. Once construction is over the builder is entitled to sell his share of 60% of the build up area and appropriate the sale proceeds. Court will not



encumber the builder in that regard. But, so far as 40% build up area is concerned, the concerned respondent would not sell, alienate or encumber or transfer the same without permission of the Court. So far as Rs.6 lacs is concerned, the concerned respondent would be bound to abide by orders of this Court in respect thereof and the usufruct therefrom, which direction may be given in the ultimate judgment of this Court.

With these observations and directions, the interlocutory application stands disposed of.”

7. Challenging the aforementioned two orders passed in F.A. No.425 of 1991 i.e., orders dated 14.05.2009 and 27.11.2009, the petitioner also moved the Apex Court. In the meanwhile, the petitioner also moved this Court in M.J.C. No.2215 of 2009 and vide order dated 19.02.2010, this Court prohibited Opposite Parties No.1, 2 and 6 from proceeding further with the construction on the land in question until further orders of this Court. Notices were also issued to the opposite parties. Soon thereafter, vide order dated 26.03.2010, passed in S.L.A.(Civil) No.4241-4242 of 2010, the Apex Court also directed that *status quo*, as of today, shall be maintained by the parties until further orders.

8. Learned counsel for the petitioner thus contends that the interim order passed by this Court has been violated as



Annexure C to Annexure 4 clearly reveals that even prior to 27.11.2009, the contemnor-opposite parties had started with the construction and contempt is made out prior to 27.11.2009. The present case is one in which the contemnor-opposite parties should be proceeded against under the Contempt of Court Act by initiating contempt proceedings against them.

9. Responding to the notices issued to the private opposite parties, the opposite party No.6 has filed a show cause stating that he is the builder with whom agreement had been entered into by Opposite Parties No.1 and 2 and he had no knowledge about the order dated 24.08.2006 passed in I.A. No.582 of 2005, arising out of F.A. No.25 of 1997. It was contended by him that O.P. Nos. 1 and 2 were not parties to the First Appeal and had no knowledge about the interim order passed in F.A. No.425 of 1991. It was submitted that O.P. Nos.1 and 2 filed an application before the P.R.D.A. in the month of November, 2007 for approval of the map but soon thereafter, they came to know that the land in question, bearing Plot No.1058, Khata No.205 situated in Salempur Dumra, P.S.-Shastri Nagar, District-Patna is under litigation and thus filed I.A. No.4860 of 2007 for vacating the aforesaid injunction order dated 24.08.2006. In the said I.A., an order dated 14.05.2009 was passed by Hon'ble Mr Justice V.N. Sinha, who permitted the parties



to negotiate and to execute agreement to alienate Plot No.1058, Khata No.205 situated in Salempur Dumra, P.S. Shastri Nagar, District-Patna with the builder. A further direction was issued to O.P. Nos.1 and 2 to furnish the agreement and the terms on which the land was sought to be transferred to the builder on affidavit of self and that of the builder. It was further directed that the Court shall thereafter pass further orders as to how the property shall be dealt with by the builder after construction and how the proceeds of the said agreement would be dealt with/received from the builder.

10. It was only after the aforesaid order that an agreement dated 18.05.2009, executed by Opposite Party Nos.1, 2 and 5 as well as affidavited by Opposite party No.6, was filed along with I.A. No.3399 of 2009 in F.A. No.425 of 1991. The Builder (Opposite Party No.6) in his agreement had given his consent to give 40% of the built up area to the owner and 60% of the built up area will remain with the builder (O.P. No.6), who had agreed to pay Rs.6,00,000/- to the land owner in lieu of alienation of the land. An affidavit was also sworn by the builder and filed in I.A. No.3399 of 2009, whereby he assured the Court that he will abide by the order of this Court as well as the terms and conditions of the agreement. Accordingly, he prayed that the interim order passed by the Court stood modified by the subsequent order and, therefore,



there is no wilful disobedience of the order of the Court so as to necessitate initiation of contempt proceedings against the said opposite parties.

11. A show cause has also been filed on behalf of Opposite Parties No.1 and 2, which clearly brings to the fore similar facts as have been stated by Opposite Party No.6. It was submitted by O.P. Nos.1 and 2 that the order passed by the Apex Court was challenged by them for vacating the order of *status quo*, but though the same was not allowed, a direction was issued to dispose of the first appeal within a period of six months. It was also pointed out that Misc. Appeal No.112 of 1991 had also been filed challenging an *ex parte* order, in which, vide order dated 14.12.1995, this Court had directed that the miscellaneous appeal should be heard along with the present first appeal.

12. It was also contended by O.P. Nos.1 and 2 that the heirs have been substituted in the first appeal only vide order dated 23.09.2008 passed in I.A. No.5376 and I.A. No.5377 of 2008 that previously they were not parties as only after substitution, the petition having been allowed on 23.09.2008, this appellant came to know about the interim order. It was further stated that the petitioner has not come to this Court with clean hands, rather, while on the one hand, he had filed a petition for injunction vide I.A.



No.582 of 2005 in F.A. No.425 of 1991, at the same time, the petitioner-appellant Bhubneshwar Singh sold the land on 03.05.2006 to one Ajit Kumar and executed sale deed, measuring an area 1 Katha pertaining to Tauzi No.5295, Khata No.60, which has been allotted in favour of O.P. Nos.1 and 2.

13. Thus, the contempt petition is based on false and misleading statements and concealment of facts and the order of injunction was granted without giving notice to the opposite parties. They thus prayed for dropping the contempt proceedings and imposing heavy cost on the petitioner.

14. It was also brought to the notice of the Court that Misc. Appeal No.112 of 1991, which was filed for setting aside the *ex parte* decree was allowed and the *ex parte* decree has been set aside and accordingly F.A. No.425 of 1991, which was against the preliminary decree, has been rendered infructuous as per the order passed by this Court on 13.05.2015. Thus, as on date the interim order does not exist and also renders the present M.J.C. application infructuous.

15. I have heard learned counsel for the petitioner and the learned counsel appearing for the opposite parties-Patna Municipal Corporation at length. It appears from the record of the case that the first appeal itself has now been disposed of. However,



learned counsel for the petitioner seriously contends and submits that the opposite parties have committed contempt of the interim order and as per the law settled by the Apex Court, the opposite parties, on having willfully defied the same, must be punished. They have referred to a decision of the Apex Court in the case of ***State of M.P. and Anr. v. Suresh Narayan Vijayvargiya and Ors.***, reported in ***AIR 2014 SC(Supp) 1494***, wherein it has been stated:

“14. We have, on facts, found that there has been a wilful disobedience by the contemnors of the orders passed by this Court, which is nothing but interference with the administration of justice. Disobedience of an order of a Court, which is wilful, shakes the very foundation of the judicial system and can erode the faith and confidence reposed by the people in the judiciary and undermines rule of law. The Contemnors have shown scant respect to the orders passed by the highest Court of the land and depicted undue haste to fill up the entire seats evidently not to attract better students or recognize merit, but possibly to make unlawful gain, adopting unhealthy practices, as noticed by this Court in TMA Pai Foundation and Ors. v. State of Karnataka and Ors. (2002) 8 SCC 481:(AIR 2003 SC 355) and various other cases. Once the Court passes an order, the parties to the proceedings before the Court cannot avoid implementation of that order by seeking refuge



under any statutory rule and it is not open to the parties to go behind the orders and truncate the effect of those orders....”

16. In the considered opinion of this Court, the order, which is stated to be under contempt and which has already lost its effect by virtue of subsequent modifications and permission having been granted to the opposite parties by this Court to enter into an agreement, the citation, as referred to above, would not apply in the present context and would be hit by the doctrine of merger, which has been dealt with and cited at the bar by the State in the case of ***Sudhir Vasudeva v. M. George Ravishekaran***, reported in (2014)3 SCC 373, paragraph 20 of which reads as under:

“20.....Of relevance is the fact that an alternative direction had been issued by the High Court by its order dated 2.8.2006 and the appellants, as officers of the Corporation, have complied with the same. They cannot be, therefore, understood to have acted in wilful disobedience of the said order of the Court. All that was required in terms of the second direction having been complied with by the appellants, we are of the view that the order dated 2.8.2006 passed in M. George Ravishekaran v. ONGC Ltd. stands duly implemented.”

17. Learned counsel has also relied upon a decision in the case of ***Kamalesh Sah v. Paras Mani Rai***, reported in 2004(2)



PLJR 171, and a decision reported in ***AIR 1997 S.C. 1240***
(Tayabbhai M. Bagasarwalla v. Hind Rubber Industries Pvt. Ltd.).

These cases also do not persuade this Court to hold in favour of the petitioner. In the present facts and circumstances, the Court has subsequently modified the order and granted conditional permission to deal with the properties. The subsequent order passed by the Court was also put to test in an SLP which was ultimately dismissed.

18. Thus, the law as cited by the petitioner in the present facts and circumstances do not suffice and persuade this Court to proceed further in the contempt proceedings.

19. The M.J.C. application thus stands dismissed.

(Anjana Mishra, J)

PNM

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