

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Contempt Petition No. 21 of 2004**

Intazamiya Committee, Jama Masjid (Wakf) Bilha through Firoz Ahmed (a member) aged about 40 years son of Abdul Karim, resident of Talapara, Bilaspur, Tahsil and District Bilaspur, Chattisgarh.

---- Applicant/Petitioner**Versus**

1. State of Chhattisgarh, Through Collector, Bilaspur, Chhattisgarh.
2. Shri Rahul Kumar Bajpayee, aged about 44 years, S/o Rohini Kumar Bajpayee, resident of Idgah Chowk, Bilaspur, Tahsil and District Bilaspur, Chattisgarh.

----Contemnor/Respondents

For Petitioner : Shri S.C.Verma, Shri Qamrul Aziz, Advocates.
 For Respondent/State : Shri Arun Sao, Deputy Advocate General.
 For Respondent No. 2 : Shri Ravish Agrawal, Senior Advocate, Dr. N.K.Shukla,
 Senior Advocate with Shri Sumesh Bajaj, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****27/01/2017**

1. This case reveals an appalling state of affairs with regard to administration of the High Court of Chhattisgarh. It reflects total incompetency of the Registry in listing matters before the Courts well within time.
2. Writ Petition No. 3443 of 2003 was filed on 17.10.2003. In this petition, the Petitioner claimed that Respondent No. 4 and 5 in the writ petition had illegally transferred the property in favour of Respondent No. 6-Rahul Kumar Bajpayee. The case of the Petitioner was that the property being wakf property could not have been transferred. This petition, though filed on 17.10.2003, was processed for hearing on 29.10.2003 but actually listed in Court for the first time after two months on 19.12.2003. There is no reason given on the file why the case was not listed for admission within a reasonable tie. On 19.12.2003, the following order was passed:

"Heard Shri Saifuddin Rajas, counsel for the petitioner.

First of all, learned counsel for the petitioner made a request that names of Collector & Superintendent of Police, respondents No. 2 & 3 respectively, may be allowed to be

deleted and Collector & Superintendent of Police may be allowed to remain as party-respondents on their designations, but not on their names. His request is allowed. The amendment is carried out in the Court itself.

Shri Sanjay K Agrawal, Deputy Advocate General takes notice on behalf of the State/respondents 1 to 3.

Counsel for the petitioner to supply extra copies of the petition to counsel for respondents 1 to 3 within three days.

Issue notice to respondents 4 to 6. PF to be paid within three days.

Also heard on M(W)P No. 3132/2003.

Having heard the learned counsel for the parties and having regard to the facts and circumstances of the case, respondents 4 to 6 are directed to maintain status quo as it exists today on the disputed property.

In view of this order, M(W)P No. 3132/2003 and IA No. 9929/2003 stands disposed of.

Parties are entitled for certified copy of this order."

3. On 02.01.2004, Respondent No. 6-Rahul Kumar Bajpayee filed an application under Article 226(3) of the Constitution of India praying for vacation of the stay order. Thereafter, on 21.01.2004, he filed a programme showing how he was going to raise construction giving day to day time frame and the manner in which he was to raise construction.

4. The writ petition was listed before the Court on 23.01.2004. On this date, none appeared for the Petitioner. Respondent No. 6-Rahul Kumar Bajpayee was represented by Shri U.N.Awasthy, learned Senior Counsel and without making reference either to the stay application or to the application for vacation of stay, the Court adjourned the matter for 04.02.2004. It appears that the matter was not listed on 04.02.2004. It was then listed on 13.02.2004 when the following order was passed:

"13.02.2004
Delisted
B.O.
Sd/-"

5. This order is not signed by the Judge but obviously by the Reader as per the practice prevalent in the High Court of Chhattisgarh and the Reader ordered delisting of the case. Therefore, neither the application for stay nor the

application for vacation of stay nor the application placing on record the programme for construction, were considered by the Court. The matter was then listed in the Court on 16.03.2004 when it was adjourned for 10 days at the request made on behalf of Shri Awasthy. Here it would be important to note that on this date an order was passed stating that the interim order dated 19.12.2003 to continue. Thereafter, the matter was listed on 17.06.2004 and it was directed to be listed before some other Bench. Then the matter was not listed for more than one year and came to be listed on 02.08.2004 and on the said date the application for amendment filed by the Petitioner for bringing on record the subsequent events, was allowed. The case was then listed in Court on 16.08.2005 when permission was granted to the Respondents to file reply to the amended petition. On 09.03.2006, the learned Judge ordered that this matter be linked with Writ Petition No. 3081 of 2003. On 17.04.2004, the case was adjourned again but some persons were permitted to intervene in the matter and it was again ordered that this matter be listed alongwith Writ Petition No. 3081 of 2003. The matter was still not heard and finally on 30.07.2007, the writ petition was dismissed not on merits but on the ground that the Petitioner had an efficacious alternative remedy of approaching the Wakf Tribunal. The question whether the property in dispute was a Wakf property or not was left open. It is not disputed that thereafter, the Petitioner approached the Wakf Tribunal which has rejected the claim of the Petitioner and now that order of the Wakf Tribunal is under challenge before this Court.

6. It has been contended on behalf of the Respondents that in fact a civil suit had been filed on 24.10.1990 which was transferred to the Wakf Tribunal and that suit was dismissed on 28.11.2015.

7. Now coming to the contempt petition, that reflects total inefficiency on the part of the Registry of this Court. The contempt petition was filed by the present Petitioner on 27.02.2004. An objection was raised by the Registry on 28.02.2004 that the name of the Contemnor No. 1 had not been mentioned in the cause title of the petition. Thereafter, on 04.03.2004, learned counsel for the

Petitioner filed an application for removal of the default and this application was registered as IA No. 821 of 2004 but the application was never listed before Court. On 17.04.2004, the Petitioner filed an application (IA No. 1288 of 2004) praying for urgent hearing of the matter. This application also remained on the file for three long years and the matter was not listed before the Court for three years. It is only on 23.02.2007, that this contempt petition was listed for the first time and on this date, the order passed was "List with W.P. No. 3081/2003". Though, this contempt petition was to be listed with Writ Petition No. 3081 of 2003, it appears that it actually was not listed with that writ petition. Furthermore, this contempt petition should have been ordered to be listed with Writ Petition No. 3443 of 2003 and not with Writ Petition No. 3081 of 2003 even though these two writ petitions may have been connected with each other. On 01.03.2007, this Court passed no orders except to state that this case be listed on 19.03.2007. On 19.03.2007, the Respondents were granted time to file counter-affidavit. On 03.05.2007, an objection was raised on behalf of the Respondents that the petition was liable to be rejected since it was not initiated within one year as mandated under Section 20 of the Contempt of Courts Act, 1971 (hereinafter called 'the Act') and another objection raised was that the interim order dated 19.12.2003 stood automatically vacated after 15 days of the filing of the application under Section 226(3) of the Constitution of India.

8. These objections were rejected by my learned predecessor in the following terms:

"(4) Dr. N.K.Shukla, learned Senior Counsel appearing for the non-applicants reiterates the assertions made in the returns filed by the respondent No. 6. In my opinion, none of the assertions so made has any merit whatsoever. This Court while granting the interim order had directed the non-applicants to maintain status-quo as existed that day on the disputed property. That only means that the respondent No. 6 shall not change the character/nature of the disputed property till the order is modified or till the writ petition is disposed of one way or the other. The interim order so passed, in my opinion, is continuous cause of action and the respondents can not be pleading that by virtue of Section 20 of the Contempt Courts Act, the petition filed by the petitioner is barred by limitation.

(5) Merely because the respondent No. 6 had filed the application, it does not mean that the interim order passed by this Court is modified/vacated. In fact, the application is still pending for consideration before this Court and no orders are passed on that application. Merely because such an application is pending it does not mean that he could proceed with the construction and thereby disobey the orders and directions issued by this Court. Tentatively, I am of the opinion that the 6th respondent has disobeyed the orders and directions issued by this Court. Therefore, charges requires to be framed and an enquiry requires to be held against the 6th respondent as provided under the Contempt of Courts Act. For the purpose of framing charges, post this matter on 07.05.2007. Respondent No. 6 is directed to be present before this Court on 07.05.2007. Ordered accordingly."

9. Thereafter, it was ordered that charge be framed. Though, 10 more years have elapsed, even charge has not been framed till date. The matter has been adjourned merely on the asking of the counsel for the parties or not listed for years together but charge has not been framed. Contempt proceedings cannot be permitted to drag on in this manner. If somebody violates the order of the Court, he must be taken to task immediately. If contempt proceedings are allowed to continue endlessly without effective orders being passed, that by itself is a mockery of the process of justice. It adds insult to the injury already caused. There is no justifiable reason that why for 10 long years the case was not even listed for framing of charges.

10. This case has been listed before me on three or four occasions and a lot of time has been spent on hearing arguments on the issue whether the contempt petition has been initiated within time or not as mandated under Section 20 of the Act, which reads as follows:

"20. Limitation for actions for contempt. - No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

11. In my view, it is not open for this Court to go into this question because of the finding given by my predecessor already quoted herein. That finding, whether right or wrong has attained finality and if the parties have not chosen to challenge the said finding, it is binding on me unless it is set aside. It is urged

on behalf of the Respondents that the said finding is totally erroneous and against law. I am not in agreement with this submission. Though, the view taken by the Apex Court in *Om Prakash Jaiswal v. D.K.Mittal* {(2000) 3 SCC 171} favours the view taken by the Respondents, that view is no longer a good law in view of the judgment of the three Judge Bench of the Apex Court in *Pallav Sheth v. Custodian & Others* {(2001) 7 SCC 549} wherein in no uncertain terms, it was held that the judgment in *Om Prakash Jaiswal (supra)*, does not lay down the correct law. It would not be necessary for me to deal with all the citations because the Apex Court has expressed a view on the matter which is binding on this Court. Reference may be made to the following portion of the judgment of the Apex Court in *Pallav Sheth (supra)*:

"38. The Rules so framed by all the Courts in India do show that proceedings are initiated inter alia with the filing of an application or a petition in that behalf. If, however, proceedings are not initiated by filing of an application within a period of one year from the date on which the contempt is alleged to have been committed then the Court shall not have jurisdiction to punish for contempt. If, on the other hand, proceedings are properly initiated by the filing of an application, in the case of civil contempt like the present before the Court within the period of limitation then the provisions of Section 20 will not stand in the way of the Court exercising its jurisdiction.

39. In the case of criminal contempt of subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or the Law Officer of the Central Government in the case of Union Territory. This reference or motion can conceivably commence on an application being filed by a person whereupon the subordinate court or the Advocate-General if it is so satisfied may refer the matter to the High Court. Proceedings for civil contempt normally commence with a person aggrieved bringing to the notice of the Court the wilful disobedience of any judgment, decree, order etc. which could amount to the commission of the offence. The attention of the Court is drawn to such a contempt being committed only by a person filing an application in that behalf. In other words, unless a Court was to take a suo motu action, the proceeding under the Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing to the attention of the Court to the contempt having been committed. When the judicial procedure requires an application being filed either before the Court or consent being sought by a person from the Advocate-General or a Law Officer it must logically follow that proceeding for contempt are initiated when the applications are made.

40. In other words, the beginning of the action prescribed for

taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding to such initiation. Similarly, in the case of a civil contempt filing of an application drawing the attention of the Court is necessary for further steps to be taken under the Contempt of Courts Act, 1971.

41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the Court a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr. Venugopal would mean that the Court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of a contempt having been committed and the same having been brought to the notice of the Court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigant as also by placing a pointless fetter on the part of the Court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the Appellant, which would render the constitutional power of the Courts nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore be avoided.

42. The decision in *Om Prakash Jaiswal case* to the effect that initiation of proceedings under Section 20 can only be said to have occurred when the Court formed the prima facie opinion that contempt has been committed and issued notice to the contemner to show-cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted and is not only going to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realities of the situation. For instance, in a case where a contempt of a subordinate court is committed a report is prepared whether on an application to Court or otherwise, and reference made by the subordinate court to the High Court. It is only thereafter that a High Court can take further action under Section 15. In the process, more often than not, a period of one year elapses. If the interpretation of Section 20 put in *Om Prakash Jaiswal case* is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court or the High Court making of a reference by a subordinate court on its own motion or the filing an application before an Advocate-General for permission to initiate contempt proceedings is regarded as initiation by the Court for the purposes of Section 20, then such

an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, de hors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the Courts to punish for contempt which is recognised by the Constitution.

43. A question arose before a Full Bench of the Punjab & Haryana High Court in the case of *Manjit Singh v. Darshan Singh* with regard to the application of Section 20 to the proceedings of criminal contempt. After coming to the conclusion that on the language of Section 20 the date when time begins to run is fixed from the point on which the criminal contempt is alleged to have been committed the Court had to decide the terminating point or the terminus ad quem for the limitation under Section 20 of the Act. Four possibilities which fell for consideration in this regard were: (i) the date on which the actual notice of contempt is issued by the Court; (ii) the date on which the Advocate General moves the motion under Section 15(1)(a); (iii) the date on which a subordinate Court makes a reference of the criminal contempt under Section 15(2) of the Act and, (iv) the date on which any other person prefers an application to the Advocate-General for his consent under Section 15(1)(b) of the Act. On behalf of the State, the contention raised before the Full Bench was that the sole terminus ad quem was the date of the actual issuance of the notice of criminal contempt by the Court and reliance in this behalf was inter alia placed on the above mentioned decision of this Court in *Baradakanta Mishra case*. The Full Bench, in our opinion, rightly came to the conclusion that the sole question which arose for consideration in *Baradakanta Mishra case* related to the interpretation of Section 19 of the Act and no question of interpreting or applying Section 20 was at all in issue. Following the dictum of Lord Halsbury in *Quinn vs. Leatham* that a case is only an authority for what it actually decides and cannot be quoted for a proposition that may even seem to follow logically therefrom, the Full Bench correctly observed that *Baradakanta Mishra case* was no warrant for the proposition that the issuance of a notice of criminal contempt by the High Court is the sole terminus ad quem for determining limitation under Section 20 of the Act. The Court then proceeded to observe in paras 13 and 19 as follows:

"13. Once that is so, one must now proceed to analyse and construe S.20 independently. A plain reading thereof would indicate that the legislature drew a clear line of distinction betwixt proceedings for contempt initiated by the Court on its own motion, and those not so done. Suo motu action by the High Court is thus clearly a class by itself. Consequently the statute in express terms refers to these two classes separately, namely, any proceedings for contempt on Court's own motion, and proceedings for contempt initiated "otherwise". The use of the word 'otherwise' is significant and indeed provides the clue to be the true interpretation of Section. 20. Therefore, initiation of contempt proceedings otherwise than on Court's own motion would include within its sweep a motion by the Advocate General, a reference by a

subordinate Court to the High Court to take action for contempt and an application before the Advocate General seeking his consent by any other person under Section 15 and lastly in cases of civil contempt the motion by a private litigant directly in the Court.

* * *

19. To finally conclude it must be held that the terminus a quo for limitation begins under Section 20 of the Act on the date on which the contempt is alleged to have been committed. The terminus ad quem in case of criminal contempt would necessarily vary and be related to the modes of taking cognizance thereof provided for in Section 15. In cases where it is initiated on the Court's own motion it would necessarily be from the issuance of the notice for contempt by the Court. In case of a motion by the Advocate General under Section 15(1)(a), the proceedings would initiate from the date of the filing of such a motion in the High Court. Where any other person moves the Advocate General for his consent in writing as prescribed in Section 15(1) (b), the initiation of proceedings would be with effect from the date of such application. Lastly, in cases of criminal contempt of a subordinate Court on a reference made by it the proceedings must be deemed to be initiated from the date when such reference is made."

44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the Court and that instituted otherwise than on the Court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the Court itself which must initiate by issuing a notice. In other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the Court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed.

12. In the present case, from the facts quoted above, it is obvious that petition for initiating contempt proceedings was filed in the Court in the month of February, 2004. An objection was raised by the Registry that there is a defect inasmuch as Contemnor No. 1 has not been named. That defect was removed within a few days but thereafter the matter was not listed before the Court. That is not the fault of the person approaching this Court and therefore, I hold that the contempt petition is within limitation

13. The second issue raised is that once the Petitioner had filed application for vacation of stay on 02.01.2004 and had supplied copy of the application to the other side alongwith all documents, then in terms of Section 226(3) of the

Constitution, the stay stood automatically vacated. In view of the order of my learned predecessor quoted hereinabove, where he has clearly held that interim order was not modified/vacated, I am not going into the scope and ambit of Article 226 (3) of the Constitution of India.

14. To be fair to Shri Ravish Agrawal, I am pointing out that he has relied upon the following judgments in support of his contention that if an application for vacation of stay is filed and not disposed of within 15 days, then the stay stands automatically vacated. The first judgment is *Gheesa Lal v. State of Rajasthan* (AIR 1981 Raj 65), the second is *Krishna Kumar Aganvala v. Reserve Bank of India & Others* (AIR 1991 Cal 272), the third is *P. Raghunandan v. Regional Transport Authority* (AIR 1996 Ker 115), the fourth is a Full Bench judgment of Gujarat High Court in *District Development Officer v. Maniben Virabhai* (AIR 2000 Guj 255) and lastly, the judgment in *R.C.Chaudhary v. Vice Chancellor, Dr. Bhim Rao Ambedkar University, Agra and Others* (AIR 2004 All 95). These judgments support the submission of Shri Agrawal, but since my predecessor has already decided this question and that finding of my learned predecessor has not been challenged attained finality in this case the same cannot be reopened. I leave this legal question open to be decided in an appropriate proceeding.

15. However, I may add that as far as the present case is concerned, I find that on 16.03.2004 i.e. after the application for vacation of stay had been filed, after the memorandum of dates had been filed, the High Court passed an interim order that the stay order was to continue. At this time, the Respondent No. 6 was represented by the counsel in the Court and no objection was taken that the stay order stands already vacated and therefore cannot continue any longer. The Respondent has submitted that they were advised by Shri U.N.Awasthy, learned Senior Counsel that the order automatically stood vacated. This assertion of the Respondents is also supported by the reply filed in the contempt petition in which it has been stated that "the Senior Counsel Shri Upendra Awasthi was of the opinion that in terms of Article 226(3) of the

Constitution of India, the stay order is deemed to be vacated and the answering Respondent bonafidely acted upon his advice". I have no doubt in my mind that the opinion given by Shri Awasthy was absolutely wrong. The issue is whether even if this opinion is wrong, can it be said that the Respondent No. 6 has willfully disobeyed the order of this Court so as to amount to contempt of Court. A party acts on the advice of the counsel and if the counsel rightly or wrongly advises a party that the action taken by it is legal, then it cannot be said that the party has willfully disobeyed the orders of this Court. In this regard, it would also be pertinent to mention that even when the reply was filed, the Respondent No. 6 was represented by Ms. Raksha Awasthy and in the Power of Attorney filed, it is clearly stated that the matter will be argued by Shri U.N.Awasthy, Senior Counsel. Even when this reply was filed, Shri U.N.Awasthy was not disowning the fact that he had advised the party accordingly.

16. In view of the above discussion, though I am clearly of the view that the Respondents have disobeyed the stay order of this Court granted on 16.03.2004 and acted improperly in raising construction despite orders to the contrary, it would not be appropriate to take action under the Act against them for the following reasons: (i) 13 years have already elapsed since the original order was passed and the construction which is stated to be in violation of the Court's order was raised more than 13 years back. It would be impossible to set the clock back at this belated stage. (ii) The Respondents acted on the advice of a Senior Counsel which is reflected from the documents referred to above, therefore, it cannot be said to be any willful contempt of the order of the Court. (iii) The writ petition was finally dismissed on the ground that the Petitioner had efficacious remedy and the Wakf Tribunal has now held that the property is not the wakf property. It is clarified that this Court is not endorsing the findings of the Wakf Tribunal because that matter is the subject matter of litigation and this Court is only concerned with the contempt proceedings. Lastly, I am of the view that even if I was to hold that the Respondents have committed willful contempt, in such eventuality I would have accepted the unqualified written apology in

view of the fact that the Court should be magnanimous and it must make a difference between those persons who willfully commit contempt and those who commit contempt on wrong advice. If I was to hold that the Respondents was guilty of contempt which I am not doing so, then also I would have accepted his unqualified apology.

17. In this view of the matter no ground is made out for framing charges against the Respondents and the contempt petition is dismissed.

18. A copy of this order be sent to the Registrar General and Registrar (Judicial) who are directed to ensure that such sort of negligence and delay in listing the cases does not occur in future.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Amit