

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO. 139 OF 2017
IN
WRIT PETITION NO. 3188 OF 2015

Waman Barku Salve and others .. Petitioners

VS.

Dilip Tulshiram Bagule and others .. Respondents

Mr. Girish B. Kulkarni, Advocate for the petitioners
Mr. P.S. Patil, AGP for the respondent/State

CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 08-06-2017

ORAL ORDER :

1. The petitioners in this contempt petition had filed writ petition no. 3188 of 2015. That writ petition sought relief from this court against the respondents, to deposit the amount of compensation including rental compensation else return the agricultural land. The respondent – State, according to the petitioners, in the writ petition and in this contempt petition, took possession of the agricultural lands of the petitioners in the year 2008 for construction of percolation tank.

2. The construction of percolation tank was undertaken and completed but no rental compensation was paid. The argument was

that the respondents to the writ petition and this contempt petition can not retain possession of the land and default in payment of compensation. This Court passed an ad-interim order in writ petition no.3188 of 2015 and directed respondents to deposit the amount.

3. This Court noted the argument of petitioners as also the respondents that the construction of percolation tank was under the Marathwada Development Package for which the funds were to be utilized.

4. Noticing these facts, this Court held that though right to property is not a fundamental right, it is nonetheless a constitutional right. It is also a human right.

5. Petitioners have been deprived of their source of livelihood. We are not concerned with the observations in the judgment for what we note is that this Court was throughout aware that at best it can render an adhoc assistance to parties like petitioners but the petitioners themselves have to be vigilant and assert their rights in time as they concern their property. If they do not assert their rights, then, this Court can only grant them the limited protection by recording statements of the State's advocate and in the present case, that statement was recorded and the order disposing of the Petition was passed on 22/11/2016. The relevant paragraphs of the order read thus :-

"6. The learned A.G.P. on instructions of the Land Acquisition Officer who is present in the Court does not dispute that proposal has been received from Zilla Parishad for acquisition. The respondent-State shall make endeavour to initiate acquisition proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 immediately. The notification as required under the provisions of the Act 2013 shall be issued expeditiously and preferably within three months from the date of this order and acquisition proceedings thereafter shall be completed within the period stipulated under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The compensation amount that would be arrived at shall be paid to the petitioners upon passing of the award immediately. The State may also endeavour to pay advance compensation to the petitioners if it is feasible.

7. The amount of Rs. Six lakhs is being deposited by the Acquiring body with the Court pursuant to the interim orders. The said amount is allowed to be withdrawn by the petitioners and shall be adjusted in the payment of compensation amount as would be arrived by the Land Acquisition Officer.

8. Writ petition is accordingly disposed of with aforesaid observations and directions. No costs. In view of disposal of writ petitions, Civil application also stands disposed of."

6. Now this Contempt Petition is brought alleging that the respondents have wilfully disobeyed the order or direction of this court. They did not commence or conclude the proceedings for acquisition though they gave a time schedule and outer limit for its initiation and conclusion.

7. We have to make a distinction between the directions in other matters and the directions that are issued in the peculiar facts and circumstances of this case. We cannot allow parties like the petitioners, to use contempt proceedings as a tool or mechanism to obtain additional or substantive reliefs. We cannot entertain a Contempt Petition because such orders and directions proceed on the footing that public funds would be made available, and an endeavour would be made to initiate acquisition proceedings. These directions cannot be made a foundation for alleging civil contempt.

8. The contempt jurisdiction, as Hon'ble Supreme Court holds, is a special one, to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the Judicial institutions. The petitioners cannot insist that this

Petition be admitted and decided in accordance with the Contempt of Courts Act, 1971, culminating in a sentence in terms thereof being awarded. It is for this Court to decide whether such complaints as are made, should be taken cognizance of. They cannot be entertained merely for the asking. It is well settled that mere disobedience or non-adherence to directions of aforesaid nature cannot be held to be sufficient to proceed and hold the respondents and authorities like them, guilty of civil contempt. In the two decisions of the Hon'ble Supreme Court, the nature of Contempt proceedings is highlighted. It is emphasised that this Jurisdiction is not comparable with other powers that are exercised by the higher Courts. In **Anil Ratan Sarkar and others V. Hirak Ghosh and others** reported in **A.I.R. 2002 S.C. 1405**, the Hon'ble Supreme Court held as under:-

“13. Before proceeding with the matter further, certain basic statutory features ought to be noticed at this juncture. The Contempt of Courts Act, 1971 has been introduced in the Statute Book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country – undoubtedly a powerful weapon in the hands of the law Courts but by itself operates as a string of caution and unless thus otherwise satisfied beyond, it would neither be fair nor reasonable for the law Courts to exercise jurisdiction under the Statute. The observation as above finds

support from a decision of this Court in Chhotu Ram v. Urvashi Gulati & Anr. (2001 (7) SCC 530), wherein one of us (Banerjee, J.) stated as below :-

“As regards the burden and standard of proof, the common legal phraseology “he who asserts must prove” has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the “standard of proof”, be it noted that a proceeding under the extraordinary jurisdiction of the Court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt.”

14. Similar is the situation in Mrityunjoy Das & Anr. v. Sayed Hasibur Rahaman & Ors. (2001 (3) SCC 739) and as such we need not dilate thereon further as to the burden and standard of proof vis-a-vis the Contempt of Courts Act – Suffice it to record that powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide.

15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a "civil contempt" within the meaning of Section 2(b) of the Act of 1971 – the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation – the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise."

Once again in **Dr Prodip Kumar Biswas v. Subrata Das and others** reported in **2004 SCC (Cri) 1341**, the Hon'ble Supreme Court reiterated the above as under :-

"9. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. (*See Supreme Court Bar Assn. v. Union of India (1998) 4 SCC 409*)."

9. It is in these circumstances and going by the peculiar nature of the directions as are issued, that we are unable to agree with the petitioners' counsel that the orders of this Court would be frustrated and defeated, if contempt action is not initiated and the poor and backward category of citizens, including agriculturists and farmers, would then have no hope. We do not agree with him for the simple reason that by the order and direction of this Court, the petitioners were paid adhoc compensation although they are stated to have lost possession of their lands a decade back. On the basis of such directions and as are issued, in substantive proceedings, they can claim appropriate relief. They can also meet the defence of delay and time bar on account of the order passed by this Court in this writ petition by urging that it cannot be a plea which can be invoked against them.

10. We keep open all such avenues and we do not think that we should proceed in civil contempt for the entire attempt is to obtain additional or substantive reliefs with the aid of such jurisdiction. Having reiterated the object and purpose of Contempt Jurisdiction, we do not think that this Petition should be entertained any further. The Contempt Petition is disposed of accordingly.

Sd/-
[MANGESH S. PATIL]
JUDGE

Sd/-
[S.C. DHARMADHIKARI]
JUDGE

arp/