

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.No.1870 of 2015

ORDER:

Heard Sri V.Jagapathi, learned counsel for the petitioners and the learned Government Pleader for Revenue appearing for respondent.

2. The 1st petitioner had filed the Writ Petition along with the 2nd petitioner challenging the action of the respondents in trying to interfere with their alleged possession and enjoyment of the land of extent Ac.0.38 cts covered by Sy. No.105/10 situated at Akkarampalle village, Tirupathi Revenue Mandal, Chittoor District pending proceedings under Section 11 of the A.P. (Andhra Area) Estates Abolition Act, 1948 (for short 'the Act') before the Joint Collector-cum-Settlement Officer, Chittoor.

3. On 30-12-2008 in W.P.M.P.No.37515 of 2008 in W.P.No.28662 of 2008, this Court directed the respondents not to interfere with the possession of the petitioners in respect of the above land without following due process of law.

4. It is not in dispute that subsequent thereto, the Joint Collector-cum-Settlement Officer, Chittoor, vide proceedings ROC.F1/10114/2011 dt.06-08-2014, passed orders directing grant of ryotwari patta under Section 11 (a) of the Act in favour of 1st

petitioner's wife and son since the 1st petitioner had died in the meantime.

5. This Contempt Case has been filed by the petitioners alleging that thereafter, the respondents herein along with Revenue Inspector came on 22-08-2015 at about 6.13 a.m., with other staff of Revenue Department into their land with a JCB and demolished sheds and compound wall therein and also destroyed furniture causing loss of more than Rs.5.00 lakhs to the petitioner. It is further contended that no notice or opportunity was given to the petitioners before carrying out the demolition. Petitioners also alleged that they lodged the complaint to the Alipiri Police Station, Tirupathi Urban Mandal, Tirupathi on the same day and after preliminary investigation, the Station House Officer, Alipiri also registered F.I.R.No.204 of 2015 against the respondents.

6. Notice was issued in the Contempt Case to the respondent.

7. In the meantime, W.V.M.P.No.1034 of 2010 filed by the petitioners and other respondents in the Writ Petition was rejected on 22-02-2017 after considering the submissions of the learned Government Pleader for Revenue for the respondents as well as other respondents in the Writ Petition.

8. In the vacate stay petition, it was contended that the order passed by the Joint Collector-cum-Settlement Officer, Chittoor on

06-08-2014 was subsequently set aside by the District Collector, Chittoor District, Tirupathi on 17-07-2015.

9. This Court noted that the said order was passed by the District Collector, Chittoor, without prior notice to the petitioners and therefore the said order ought to be treated as invalid and void in view of the decision in **State of Orissa Vs. Dr. (Miss) Binapani Dei and others**¹.

10. W.A.No.436 of 2017 was filed by the respondents herein and the other respondents in the Writ Petition. Initially notice before admission was ordered and after recording contentions of both parties, the following direction was given:

“From the photographs filed along with the appeal, it does not appear that the subject open land, adjacent to the bar and restaurant, is being used by the respondents-writ petitioners as an open bar and restaurant where people sit and drink. The photographs, placed for our perusal, show several tables and chairs in the open area where several people are found drinking beer and IMFL served to them thereat. It does appear that the subject site is now being used as an open bar and restaurant.

When the matter came up earlier on 07-04-2017, we had deferred herein to enable the respondents-writ petitioners to show whether they were permitted to use the open space for sale of liquor. The plan, submitted by the respondents-writ petitioners along with their application for grant of licence (a copy of which has been placed for our perusal), shows that this open area was earmarked, in the plan submitted by the respondent-writ petitioner along with their application for grant of bar licence, only for parking of vehicles. It does appear that

¹ AIR 1967 SC 1269

the open space, meant for parking vehicle, is now being used, without permission, as an open bar and restaurant.

When we asked the learned Government Pleader for Revenue whether there was any dispute regarding possession of the subject land, he would fairly state that the respondents-writ petitioners are in possession of the subject land as on date, though their possession is illegal. As the respondents-writ petitioners are in possession of the land, suffice it to direct the appellants not to interfere with their possession until further orders in this appeal. The alleged high handed acts of the Tahsildar, who is said to have demolished the compound wall, shall also be examined when the writ appeal is taken up for hearing.

The respondents-writ petitioners shall, however, ensure that the open space is kept open and is used only for parking of vehicles as shown in the plan annexed to the application for grant of licence, and is not used as a place where people come, sit and drink or to sell beer and IMFL thereat or as an open bar and restaurant. The appellants herein shall not interfere with the respondents-writ petitioners' possession of the subject land, except to ensure compliance with this order.

Post on 05-06-2017.”

11. It is not in dispute that subsequently the Writ Appeal was admitted and was directed to be listed for final hearing.

12. In this Contempt Case, initially a counter affidavit has been filed by the respondent stating that the District Collector, Chittoor had passed orders on 17-07-2015 setting aside the order passed by the Joint Collector-cum-Settlement Officer on 06-08-2014, that the orders passed by the District Collector were communicated to the petitioners directly by the Collector and the Tahsildar issued

notice setting out factum of order of the District Collector to the petitioners.

13. No proof of service of order dt.17-07-2015 is filed by respondents and counsel for petitioners asserts that till date it is not served on his clients. It is also not stated that the District Collector had issued any prior notice to the petitioners before passing the order dt.17-07-2015 canceling the order passed by the Joint Collector-cum-Settlement Officer on 06-08-2014.

14. The further defence of the respondent in the Contempt Case is that the petitioners in the Contempt Case refused to receive the notice issued by the Tahsildar (respondent), that they were orally informed on 07-08-2015 of the Collector's orders and a notice was affixed to the wall of premises called 'American Bar' existing in the subject land.

15. Petitioners deny that they were informed by the Tahsildar of the Collector's orders orally and also that they refused to receive the notice issued by Tahsildar. Counsel for petitioners states that the premises called "American Bar" is located not in their land but in the adjacent land. Why the respondent did not follow the method of sending the notice by R.P.A.D. before demolishing the compound wall and the structures therein is not explained in the counter affidavit.

16. It is however admitted by respondent that he removed the compound wall on 22-08-2015. Petitioners assert that this was

done at 6.15 a.m. in the morning. What was the grave urgency which prompted respondent to demolish the compound wall at 6.15 a.m. in the morning on 22-08-2015 is not explained in the counter affidavit.

17. In an additional counter was filed on 24-07-2017 by the respondents extracting the order in the Writ Appeal and alleging that it is the petitioners who are violating the said order. This issue cannot be gone into in this Contempt Case.

18. The interim order was granted by this Court on 30-12-2008 in W.P.M.P.No.37515 of 2008 in W.P.No.28662 of 2008 directing the respondents not to interfere with the possession of the respondents in respect of land in question without following due process of law.

19. In view of my finding that District Collector, Chittoor passed order on 17-07-2015 cancelling the order passed by the Joint Collector-cum-Settlement Officer in favour of the petitioners on 06-08-2014 without giving any prior notice to the petitioners, it cannot be said that due process of law had been followed in the matter. There is no evidence of service of notice by respondent on the petitioners. Assuming for the sake of argument without admitting it that the petitioners did refuse to receive notice offered by the respondent, nothing prevented the respondent from sending it by R.P.A.D. Why this method of service of notice is not followed by the

respondents is not explained. These actions of respondent are evidence of his failure to follow due process of law.

20. Learned Government Pleader for Revenue raised two contentions:

a) that the Writ Appeal against the order passed by this Court on 22-02-2017 in W.V.M.P.No.1034 of 2010 dismissing the said vacate petition is subject matter of W.A.No.436 of 2017 and so hearing of the Contempt Case be deferred till the Writ Appeal is decided;

(b) that the Division Bench, in the Writ Appeal, observed that the *“alleged highhanded acts of the Tahsildar (respondent herein) said to have been demolished the compound wall shall also be examined when the Writ Appeal is taken up for hearing”* and therefore, the demolition of the compound wall by the respondent is also subject matter of the Writ Appeal and **cannot** therefore be gone into in the Contempt Case.

21. As regards the first contention, a reading of the Division Bench order does not indicate that the Division Bench suspended the order dt.22-02-2017 in W.V.M.P.No.1034 of 2010 making the interim order dt.30-12-2008 in W.P.M.P.No.37515 of 2008 in W.P.No.28662 of 2008 absolute. In fact, its observation in the penultimate para indicates that it affirmed the order passed in W.V.M.P.No.1034 of 2010 since the Bench also directed respondents not to interfere with the petitioners' possession until further orders in the appeal. It is also

important to note that the Division Bench did not stay the proceedings in the Contempt Case during the pendency of the Writ Appeal. Therefore, its pendency cannot be a ground to defer the hearing in the Contempt Case. Therefore, the request of the learned Government Pleader for Revenue to defer the hearing of the Contempt Case till Writ Appeal is decided, is rejected.

22. Coming to the other contention raised by the learned Government Pleader, I am of the opinion that the observation of the Division Bench relied upon by the Government Pleader suggests that the Division Bench in the Writ Appeal would go into the action of respondents in demolishing the compound wall possibly with a view to decide how the petitioners could be compensated for such demolition. Admittedly, the Division Bench cannot, in the Writ Appeal impose any punishment on the respondents and may at best allow the Writ Appeal or dismiss it. That can only be done in this Contempt case. So the second contention is also rejected.

23. Since this Court had already made an order in W.P.M.P.No.37515 of 2008 in W.P.No.28662 of 2008 absolute on 22-02-2017 while dismissing the W.V.M.P.No.1034 of 2010; it is admitted by the respondent that he has demolished the compound wall; and the stand taken in the counter affidavit in Contempt Case by the respondent clearly shows that due process of law was not followed, it has to be held that the respondent is guilty of willful and

deliberate disobedience of the order dt.30-12-2008 in W.P.M.P.No.37515 of 2008 in W.P.No.28662 of 2008.

24. Accordingly, the Contempt Case is allowed and the respondent is sentenced to imprisonment for four (4) weeks with fine of Rs.1500/- (Rupees Fifteen Hundred only) to be paid within four weeks. The petitioners shall deposit subsistence allowance @ 300/- per day within three weeks from today. The sentence of imprisonment passed by this Court shall stand suspended for a period of four weeks from today.

25. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-07-2017
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