

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.No.2106 of 2016

ORDER :

This Contempt Case has been filed alleging willful disobedience of the order dt.26.08.2016 in W.P.M.P.No.35606 of 2016 in W.P.No.28765 of 2016 passed by this Court.

BRIEF FACTS

2. Petitioner is a senior citizen, aged 85 years. He filed on 21.03.2016 O.S.No.51 of 2016 before the Senior Civil Judge, Suryapet for declaration of his title to an extent of Acres 7.05 gts in survey No.628 of Phanigiri Revenue Village, Thirumalagiri Mandal, Nalgonda District within specific boundaries, to direct the Tahsildar, Chivvemla Mandal to mutate his name in the revenue records as owner and possessor of the said land, to declare Registered Gift Settlement Deeds No.5254/1992 and 5255/1992 both dt.02.11.1992 registered in the office of the Sub-Registrar, Suryapet as null, void and as not binding on him, and to restrain one Jangili Kishan Rao and Jangili Srinivas Rao from interfering with his peaceful possession and enjoyment over the said land.

3. He also filed I.A.No.115 of 2016 in the suit under order XXXIX Rules 1 and 2 of CPC for grant of an ex parte temporary injunction restraining the above individuals from interfering with his peaceful possession and enjoyment over the suit land.

4. On 22.03.2016, the Senior Civil Judge, Suryapet granted ad-interim injunction in favour of the petitioner against the respondents restraining them from interfering with the peaceful possession and enjoyment of the petitioner over the suit land till 29.04.2016. The said order was subsequently extended on 02.08.2016 up to 31.08.2016 and on 14.09.2016 till 08.12.2016.

5. Petitioner also filed I.A.No.230 of 2016 under Section 151 CPC seeking police protection alleging that there was a breach of temporary injunction order by the above named persons.

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6. Alleging that Jangili Kishan Rao is a retired Sub Inspector of Police in the locality and that his complaint against the said person was not being properly investigated, even though he had violated the injunction order granted by the Civil Court and had instigated the Sarpanch of the village to cultivate the subject land in violation of the interim order, petitioner filed W.P.No.28765 of 2016 before this Court.

ORDER DT.26.08.2016 IN WP.MP.NO.35606 OF 2016

7. In WP.MP.No.35606 of 2016, he sought a direction to the respondents to provide police assistance for implementing the ad-interim injunction obtained by him in I.A.No.115 of 2016 in O.S.No.51 of 2016 on the file of the Senior Civil Judge, Suryapet.

7. On 26.08.2016 this Court granted interim direction as prayed for directing the respondents to provide police assistance for implementing the

ad-interim injunction order obtained by the petitioner in said I.A. on 22.03.2016, which was being extended from time to time.

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8. Alleging that the said order passed by this Court on 26.08.2016 is not implemented by the respondents, the present Contempt Case has been filed by the petitioner.

9. Petitioner alleges that even though he placed the order of this Court before the Inspector of Police, Thungaturthi Circle, Suryapet District (3rd respondent) and the Sub-Inspector of Police, Nagaram Police Station (4th respondent), they did not show any interest stating that there is no specific order to give police aid to implement the ad-interim injunction granted by the Civil Court.

10. He stated that emboldened by this inaction of the respondents, Jangili Kishan Rao has taken away the crop raised by the petitioner and had also cut the trees in the petitioner's land; that the police are insisting on a detailed police protection order; and that in view of the fact that Jangili Kishan Rao is a retired Sub-Inspector of Police, respondents 1 to 4 are assisting him and not the petitioner.

11. Petitioner also placed reliance on the order dt.03.08.2016 in W.P.No.24052 of 2016 passed by this Court in case of *N.Maha Laxmi and others v. State of Andhra Pradesh and others*, wherein this Court had held that a specific extension of the interim order granted by the Court is not

necessary in case where there is an interim order though limited in point of time, and that such interim order would continue to be in operation till the matter is listed and taken up for hearing and a specific order vacating the same is passed by this Court. He therefore contended that the order initially granted in his favour on 22.03.2016 in I.A.No.115 of 2016 seems to be in operation since it is not vacated till date by any specific order passed by the said Court.

12. Notice was ordered to the respondents on 23.12.2016. The matter was next listed on 20.01.2017.

COUNTER OF RESPONDENT NO.4

13. On that day, counter affidavit dt.18.01.2017 was filed by 4th respondent. He contended that he was not added as a party by the petitioner in Writ Petition No.28765 of 2016 and so the Contempt Case should be dismissed against him. He contended that Nagaram Police Station of Suryapet District, where he is posted was carved out of Thirumalagiri Police Station on 11.10.2016; that Nagaram Police Station was not in existence either on the date of filing of the Writ Petition or on the date when the interim order was granted by this Court on 26.08.2016; and since Gazette Notification has not been issued by 18.01.2017, the case file has not been transferred to Nagaram Police Station, where he is posted. He admitted that after the creation of Nagaram Police Station, petitioner's son approached him with the copy of the interim order and requested to

implement the order of police aid, but alleged that he personally visited the plaint schedule property of the petitioner along with his son, found that it was a vast land and the neighbors raised objection with regard to boundaries. He alleged that no boundaries were affixed to the subject lands and he informed the petitioner's son that necessary police aid will be given if he got his land demarcated. He also stated that he would address the Tahsildar, Thirumalagiri Mandal to demarcate or identify petitioner's land to enable the police to give police assistance. He contended that unless and until specific boundaries are shown to the land, he would be unable to provide police assistance.

THE REPLY AFFIDAVIT OF PETITIONER

14. Petitioner filed reply affidavit on 02.02.2017 contending that after formation of new districts in the State of Telangana in October, 2014 petitioner's property fell within the jurisdiction of Nagaram Police Station where the 4th respondent is working; that there is no question of fixing boundaries, since specific boundaries were mentioned in the plaint filed by the petitioner; and the Revenue Divisional Officer, Suryapet, in proceedings dt.21.11.2015 in Appeal Case No.D2/1441/2015 had cancelled the pattadar passbook and title deed issued in favour of Jangili Kishan Rao and Jangili Srinivas Rao and remanded the case to the lower Court for fresh enquiry. He contended that in the said order, it is stated that Jangili Mallaiah, who is alleged to have executed registered Gift Settlement Deed in favour of the above two individuals was not a pattadar of the land. He stated that on the pretext that there are no specific boundaries, 4th

respondent is not implementing the orders passed by this Court, that it is a lame excuse and constitutes willful disobedience of the order passed by the Court.

FORM I NOTICE DT.9.3.2016

15. After hearing the contentions of both sides, notice in Form I was issued to respondents 3 and 4 on 09.03.2016 after *prima facie* coming to the conclusion that respondents 3 and 4 had willfully denied police aid to the petitioner in spite of the order dt.26.08.2016 in W.P.M.P.No.35606 of 2016 in W.P.No.28765 of 2016.

ADDL.COUNTER OF RESPONDENT NO.4

16. The 4th respondent filed additional counter stating that in due obedience to the interim order passed by this Court and with an intention of providing police protection to the subject land of the petitioner, he addressed letter dt.18.01.2017, but the postal cover containing the letter was returned with endorsement that the addressee is not residing in the village. He also stated that another letter dt.19.01.2017 was addressed to the Tahsildar, Nagaram Mandal, requesting him to furnish the particulars of land of the petitioner and to fix boundaries and the report of the Tahsildar is awaited. He stated that unless boundaries are fixed, it is difficult to identify the petitioner's land.

COUNTER OF RESPONDENT NO.3

17. The 3rd respondent filed counter on 17.04.2017 stating that the petitioner is residing in Suryapet and not in the Phanigiri village at the address given in the affidavit and that his house has been demolished. He

stated that Tahsildar, Nagaram Mandal had sent a letter dt.15.02.2017 stating that in the voters list, petitioner's name was not shown; that when they approached the petitioner to provide police protection, petitioner was not cooperating with the police; and on 08.03.2017 he went along with Village Revenue Officer, Mandal Revenue Inspector and others to survey No.628 of Phanigiri village and conducted panchanama and during the conduct of panchanama, they contacted the son of the petitioner on his mobile number, but there was no response from him and petitioner and his family members did not attend at the site.

ANOTHER ADDL.COUNTER OF RESPONDENT NO.4

18. The 4th respondent filed additional counter on 7.04.2017 stating that he took charge as Sub Inspector of Police of Nagaram Police Station on 11.10.2016 on which date the said Police Station was formed and he was not aware of the interim order dt.22.03.2016 and at that time one Sri Mahesh, Sub Inspector of Police, Tirumalagiri Police Station, Nalgonda District worked at Tirumalagiri Police Station, in whose jurisdiction petitioner's lands were located and only after bifurcation, the petitioner's land come within the limits of Nagaram Police Station. He reiterated the contents of counter affidavit filed by 3rd respondent.

THE CONSIDERATION BY THE COURT

19. Petitioner, who is a Senior citizen aged 85 years old, and who had gone to the Civil Court and obtained temporary injunction order and who has come all the way to the High court to obtain a police protection order

would certainly cooperate with the respondents as stated by the counsel for petitioner and the very story now pleaded by the respondents 3 and 4 that petitioner was not available in the village or was not cooperating with the police is clearly unbelievable. In fact it is contrary to the normal course of human conduct.

20. The contention of the 3rd respondent that on 08.03.2017 he went along with Village Revenue Officer, Mandal Revenue Inspector and others to survey No.628 of Phanigiri village, but petitioner and his son did not turn up is without merit because *prior* to their visit, notice should have been given to the petitioner or his son about the proposed visit of the 3rd respondent. Without doing so, they cannot instruct the petitioner or his son to appear on 08.03.2017 after they reached the land and blame the petitioner and his son for being absent on that day.

21. The further plea of the respondents 3 and 4 that boundaries were not fixed to the petitioner's land in survey No.1628 cannot be believed because boundaries have been given in the plaint filed by the petitioner in O.S.No.51 of 2016 before the Senior Civil Judge, Suryapet mentioning the boundaries as under:

“North	: land of Akula Venkanna and Mangamma
South	:Land of Kolishetty Anantharamulu family and Kolishetty Murali
East	:Land of Kolishetty Sudarshan(Now his sons),
West	: Land of Ravula Sathaiah and Sangishetty Ramulu ”

22. The order of temporary injunction granted by Civil Court on 22.03.2016 has not been vacated yet. Therefore, respondents are bound to provide police aid to the petitioner to protect the land within the above boundaries and they cannot now take a plea that revenue officials should first identify the petitioner's land and then only they will provide police aid.

23. In **E.T. Sunup v. C.A.N.S.S. Employees Assn.**¹, the Supreme Court deprecated the practice of Govt. officials trying to avoid implementing Court orders. It observed:

“16. It has become a tendency with the government officers to somehow or the other circumvent the orders of court and try to take recourse to one justification or other. This shows complete lack of grace in accepting the orders of the Court. This tendency of undermining the Court's order cannot be countenanced. This Court time and again has emphasised that in a democracy the role of the court cannot be subservient to administrative fiat. The executive and legislature have to work within the constitutional framework and the judiciary has been given the role of watchdog to keep the legislature and executive within check. In the present case, we fail to understand the counter filed by the appellant before the Court. On one hand they say that all the cases of GPF have been processed and on the other hand they are not prepared to revoke the administrative order. This only shows a deliberate attempt on the part of the bureaucracy to circumvent the order of the Court and stick to their stand. This is clear violation of the Court's order and the appellant is guilty of flouting the Court's order.”

¹ (2004) 8 SCC 683

24. In **Maninderjit Singh Bitta v. Union of India**², the Supreme Court reiterated :

“20. In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the orders of the court, even to constitute a civil contempt. Every party to lis before the court, and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. The government departments are no exception to it. The departments or instrumentalities of the State must act expeditiously as per orders of the court and if such orders postulate any schedule, then it must be adhered to. Whenever there are obstructions or difficulties in compliance with the orders of the court, least that is expected of the government department or its functionaries is to approach the court for extension of time or clarifications, if called for. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court’s orders would reflect the attitude of the party concerned to undermine the authority of the courts, its dignity and the administration of justice.”

21. In *Vinay Chandra Mishra, In re*³, this Court held that: (SCC p. 617, para 39)

“39. ... judiciary has a special and additional duty to perform viz. to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. ... dignity and authority of the courts have to be respected and protected at all costs.”

22. Another very important aspect even of the civil contempt is, “what is the attribution of the contemnor?” There may be cases of disobedience where the respondent commits acts and deeds leading to actual

² (2012) 1 SCC 273

³ (1995) 2 SCC 584

disobedience of the orders of the court. Such contemnor may flout the orders of the court openly, intentionally and with no respect for the rule of law. While in some other cases of civil contempt, disobedience is the consequence or inference of a dormant or passive behaviour on the part of the contemnor. Such would be the case where the contemnor does not take steps and just remains unmoved by the directions of the court. As such, even in cases where no positive/active role is directly attributable to a person, still, his passive and dormant attitude of inaction may result in violation of the orders of the court and may render him liable for an action of contempt.

23. It is not the offence of contempt which gets altered by a passive/negative or an active/positive behaviour of a contemnor but at best, it can be a relevant consideration for imposition of punishment, wherever the contemnor is found guilty of contempt of court.” (emphasis supplied)

25. In my considered opinion, the excuses given by the respondent Nos.3 and 4 indicate that they somehow or the other want to dodge their responsibility to implement the order dt.26.08.2016 in W.P.M.P.No.35606 of 2016 in the W.P. Such conduct cannot be countenanced and they cannot be allowed to abdicate their responsibility to favor the petitioner's opponent Jangili Kishan Rao, who is alleged to be retired member of the Police Department. Such a bias in favor of petitioner's opponent is the real reason for the inaction of the respondents.

26. Therefore the Contempt Case is allowed and the respondent Nos.3 and 4 guilty of willful disobedience of the order dt.26.08.2016 in W.P.M.P.No.35606 of 2016 in W.P.No.28765 of 2016. They are accordingly sentenced to pay fine of Rs.2000/- within 4 weeks from today. In default, they shall suffer Simple imprisonment of one month. They are further directed to give police aid to the petitioner without fail. If they do not

cooperate with the petitioner, the petitioner is granted liberty to revive the Contempt Case.

27. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

01-06-2017

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Note: Issue C.C. in three days.

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