

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CONTEMPT CASE No.882 OF 2016

ORDER :

This Contempt Case is filed by the petitioner alleging willful violation of the order dt.30.12.2014 in W.P.No.18448 of 2013.

2. Petitioner had applied for building permission to the Greater Visakhapatnam Municipal Corporation (for short 'GVMC'), to which respondent herein was Municipal Commissioner, seeking building permission in respect of Plot No.44 Block No.56, TS.No.1196/43-B of Waltair Ward of Visakhapatnam in the year 2009.

3. An endorsement dt.10.05.2013 was issued by the respondent rejecting the said application.

4. The said order was questioned in W.P.No.18448 of 2013.

5. On 30.12.2014 this Court passed order allowing the Writ Petition with costs and directed the respondent to approve the application of the petitioner for grant of building permission within a period four (04) weeks from the date of receipt of a copy of the order. It was held that arbitrary refusal of the respondent to grant permission to the

petitioner to make construction in the subject property is *mala fide*.

6. This was assailed by the GVMC in W.A.No.146 of 2015 before the Division Bench.

7. The Division Bench refused to suspend the order passed in the Writ Petition on 26.02.2015 in WA.MP.No.405 of 2015 and stated that if any approval of the building plan is given by GVMC, it will abide by the result of the appeal, but the petitioner herein shall not undertake any construction without permission of the Court pending disposal of the appeal.

8. After this order was passed, petitioner made a representation on 18.04.2015 bringing to the notice of the respondent the orders passed by the Division Bench in WA.MP.No.405 of 2015 in W.A.No.146 of 2015.

9. Thereupon, the respondent issued an endorsement B.A.No.10906/2015/ACP/III, dt.13.06.2015 rejecting the petitioner's application for building permission.

PETITIONER'S CONTENTIONS

10. Petitioner then filed the present Contempt Case stating that the said order passed by the respondent is contrary to

the order dt.30.12.2014 passed by this Court in W.P.No.18448 of 2013; since the said order directed the respondent to grant approval/permission for construction, the respondent could not have rejected the same; and that the respondent had willfully and deliberately violated the said order, even though the said order has not been suspended by the Division Bench.

11. Counsel for the petitioner reiterated the said contentions.

STAND OF THE RESPONDENT

12. Counter affidavit is filed by the respondent stating that the endorsement dt.13.06.2015 was issued by him in compliance of the order passed on 30.12.2014 in W.P.No.18448 of 2013 as well as the interim order dt.26.02.2015 in WA.MP.No.405 of 2015 in WA.No.146 of 2015 and that there is no willful and deliberate violation of the order passed by the Court.

13. Contentions are raised in the counter affidavit touching the merits of the matter and reiterating contentions which had been rejected by this Court while deciding the Writ Petition. It is further contended that the proceedings dt.13.06.2015 should be challenged by the petitioner in a

separate Writ Petition and Contempt Case cannot be maintained. A plea is also raised that the Contempt Case is barred by limitation.

THE CONSIDERATION BY THE COURT

14. The intention of the respondent to violate the order passed by this Court in W.P.No.18448 of 2013 became evident from the endorsement dt.13.06.2015. The Contempt Case has been filed on 02.06.2016 within one year of the endorsement dt.13.06.2015 issued by the respondent. Therefore, it is not barred by limitation and it has been filed well within limitation.

15. It is settled law that in contempt proceedings the correctness of the order, whose violation is alleged in the Contempt Case, cannot be gone into. Therefore, the contentions regarding the correctness of the order passed by this Court in the Writ Petition cannot be pleaded by the respondent as an excuse for not implementing the order.

16. Admittedly, the order in the Writ Petition was not suspended by the Division Bench in W.A.No.146 of 2015.

17. It is shocking to note that the respondent has taken a stand that the endorsement dt.13.06.2015 rejecting petitioner's application for building permission was issued in

compliance of the order dt.30.12.2014 in W.P.No.18448 of 2013 as well as the interim order dt.26.02.2015 in WA.MP.No.405 of 2015 in W.A.No.146 of 2015.

18. This Court in W.P.No.18448 of 2013 had issued a Writ of Mandamus to the respondent to *grant* building permission/approval to the petitioner to make construction in the subject property. It has not directed the respondent to consider the application of the petitioner for grant of building permission. Therefore, the impugned endorsement is clearly a willful and deliberate violation of the order passed by this Court. The respondent had no business to refuse the building permission application, when a Mandamus is issued by this Court directing him to grant approval/building permission to the petitioner, which order has not been suspended by the Division Bench.

19. The Supreme Court in **E.T.Sunup v. C.A.N.S.S.Employees Assn**¹ has deprecated the practice of Government Officials like the respondent in finding ways to flout Court orders. It noted:

“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

¹ (2004)8 SCC 683

be countenanced. This Court time and again has emphasized that in a democracy the role of the court cannot be subservient to administrative fact. 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. ...”

20. In **Maninderjit Singh Bitta v. Union of India**², the Court reiterated the same and observed :

*“26. It is also of some relevance to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. (refer **T.N. Godavarman Thirumulpad case**³ SCC pg.6, para5)”*

21. The present case is a classic instance of the said attitude. Court orders are required to be respected even if they are not palatable to the Officers of the State or the State entities. Otherwise there would be no enforcement of Rule of Law.

22. Counsel for respondent has now sought to contend that on 04.03.2017 building permission has been granted to the

² (2012) 1 SCC 273

³ (2006) 5 SCC 1

petitioner and that the respondent tenders unconditional apology to the Court for the delay in implementing the order.

23. In **M.C. Mehta v. Union of India**⁴, the Supreme Court held that an apology is not a weapon to purge the guilt of the contemnor made only with an intention to escape punishment. (at page 386):

“It is now a well-settled principle that an apology is not a weapon of defence to purge the guilt of the contemner. At the same time, the apology must be sought at the earliest opportunity. The apology tendered by the respondent is at a belated stage to escape punishment of the Court. Furthermore, as already noticed, in para 6 of the affidavit he has stated that he has not committed any contempt and defended his action. In para 9 of the affidavit, as quoted above, though it is stated that he tenders unconditional apology, it is not really so, as in para 6 of the affidavit he has defended his action. Therefore, the apology so tendered by the contemner is not a product of remorse or contrition.”

24. In **Delhi Development Authority v. Skipper Construction**⁵ at p. 523, para 67 it was pointed out as under:

“67. In considering whether the action of the contemnors amounted to contempt of court we take into account the entire course of conduct of the contemnors. As our order dated 25-1-1995 would disclose, the contemnors have indulged in judicial adventurism by raiding one court or the other. Each of such raids is a clear abuse of process of court calculated to obstruct the due course of judicial proceeding and the administration of justice. Thus, we conclude that the contemnors are guilty of contempt of court. No doubt, the

⁴ (2003) 5 SCC 376

⁵ (1995) 3 SCC 507

contemners have tendered apology. This apology is coming forth after sensing that the adventures have turned out to be misadventures, realising that the contemners have ended up in a cul-de-sac. An apology is not a weapon of defence forged to purge the guilt of the offences nor is it intended to operate as a panacea. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrongdoer's power. We do not find the apology to be so in this case. The conduct of contemners is highly reprehensible."

25. In my considered opinion, having regard to the finding in the order dt.30.12.2014 in W.P.No.18448 of 2013 that conduct of the respondent was *mala fide*, which is fortified by his conduct in issuing Endorsement dt.13.06.2015, the apology rendered by him is not *bonafide* and the delay in issuing building permission from 31.01.2015 till 04.03.2017 is not explained by any valid reason and is obviously on account of dissatisfaction or malice towards the petitioner for having approached the Court and obtained favourable orders. Since I find that the apology is not sincere and is not a product of genuine remorse or contrition, it is rejected.

26. Therefore, I held that the respondent had willfully and deliberately violated the order dt.30.12.2014 in W.P.No.18448 of 2013 by issuing the endorsement dt.13.06.2015. The respondent is sentenced to suffer thirty (30) days Simple Imprisonment with fine of Rs.1,500/- to be

paid within a period of four (04) weeks and in default of payment of fine, he shall suffer Simple Imprisonment of a further period of one (02) month. The sentence of imprisonment is suspended for a period of four (04) weeks. Petitioner is directed to deposit subsistence allowance @ 300/- per day for the duration of the imprisonment to be suffered by the respondent.

27. The Contempt Case is allowed as above.

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

10th March, 2017
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M.S. RAMACHANDRA RAO, J

