

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CONTEMPT CASE No. 1217 of 2017

Date : 22.11.2017

Between :

Okay Engineering Constructions (P) Ltd
Rep by its Director B Sudarshan Reddy
S/o late Sri Raji Reddy, 71 yrs
R/o 201 Vijetha Sanjeevani, Krishnanagar colony
Bholakpur, Opp Gandhi Hospital, Hyderabad and others
Petitioner

And

N Madhusudhan Rao
Revenue Divisional Officer,
Malkajgiri division
Plot No. 46
Vayupuri colony,
Medchal- Malkajgiri district

Respondent

The Court made the following:



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ORAL ORDER:

Petitioners in W P No. 38494 of 2016 claim that they are the absolute owners and are in possession of the land/ sites in survey Nos.48 (part), 50, 51 (Part) of the Turkapally village in Ranga Reddy district. On 9.7.2007, they have applied for paying the processing fee to Hyderabad Urban Development Authority (HUDA) which later became Hyderabad Metropolitan Development Authority (HMDA) to grant permission of lay-out under Sections 13 and 14 of the A.P. Urban Area (Development) Act, 1975 to develop the agricultural lands for residential purposes. It appears there were some objections raised by HUDA and there was correspondence interse. Vide letter dated 23.6.2016 the HUDA required petitioners to submit 'No objection certificate' under A.P. Agricultural (Conversion for Non-Agricultural Purposes) Act, 2006 (for short Act, 2006) and to demolish the ground and first floors constructed under the water tank and to submit photographs of proof of such demolition. On application made under Act,2006, the Revenue Divisional Officer (RDO) vide his memo dated 4.10.2016 demanded petitioners to pay Rs.65,34,000 including 50 % penalty as condition precedent to issue NOC. Aggrieved thereby, petitioners filed W.P No. 38494 of 2016. Petitioners filed WPMP No. 47431 of 2016 praying to direct HMDA to release final lay out by suspending the first condition i.e., to submit NOC from RDO.

2. On consideration of the submissions made by the learned counsel for petitioners, on 9.11.2016 this Court passed the following order:

“On two grounds the lay out approval was rejected by HMDA i.e., (i) NOC under the NALA Act is not submitted and (ii) to demolish the ground & 1st floor constructed under the water tank and submit the photographs.

Learned counsel for the petitioners would contend that the fee as well as penalty for conversion of agricultural land to non- agricultural purpose is regulated by The Andhra Pradesh Agricultural Land Conversion for Non-Agricultural Purpose) Act, 2006 (for short 'the Act') and the Rules made thereunder. In terms of the provisions of the Act, conversion fee has to be levied on the value of agricultural land. If there was delay in applying for conversion, as per Section 6 of the Act, penalty is liable to be levied. Only on the ground that the petitioner has applied for conversion after technical sanction of the lay out plan, levying higher fee and penalty taking present market value to non-agricultural lands is not valid in law.

Learned counsel for the petitioners would submit that petitioners are willing to pay the amount that is payable on the value of the agricultural land and the penalty thereon.

On prima-facie reading of the provisions under Sections 4 and 6 of the Act and the Rules made thereunder, it appears that what is levied on the petitioners is contrary to the said provisions; the petitioners are liable to pay only conversion fee on the value of agricultural land and penalty that may be imposed thereon.

The balance of convenience is in favour of the petitioners and against the respondents.

Having regard to the above, the following directions are issued:

(i) Subject to petitioners depositing the amount in terms of Sections 4 and 6 of the Act and the penalty that may be levied on them, treating the status of the land as agricultural land, the Tahsildar/Special Grade Deputy Collector and Revenue Divisional Officer, shall issue No Objection Certificate, subject to fulfilment of any other conditions, under the Act within two weeks from the date of payment of the amount;

(ii) On production of NOC under the Act, the lay out approval application shall be processed by the HMDA, for grant of final layout subject to fulfilment of the second condition;

(iii) Petitioners shall give an undertaking to pay the balance amount, in case the decision is rendered against the petitioners in the writ petition."

3. Alleging non compliance of the direction no.1 of the order by the RDO, this contempt case is filed.

4. Heard the learned counsel for petitioners and learned Assistant Government Pleader for respondent.

5. Learned counsel for petitioners submitted that in accordance with the directions issued by this Court, petitioners deposited an amount of Rs.10,00,000/- towards conversion charges and penalty of

Rs.5,00,000/- and also furnished undertaking on 9.11.2016 in compliance of the directions of this Court but NOC is not issued. Without any justification, the respondent is dodging issuance of NOC causing undue hardship and suffering to the petitioners.

5.1 By referring to the averments of the respondent in the counter affidavit, learned counsel would contend that treating the area as urban area and determining the value of the land as per market value guidelines at the rate of Rs.4500/- per sq.yard is not valid. He would submit that the application was submitted to HMDA in the year 2007 for issuing lay out permission. Therefore, the agricultural land value as on that date alone has to be considered while processing the application for conversion. In 2007 the character of the land was agricultural land and until it is converted it has to be treated as agricultural land to determine conversion charges. He therefore submitted that action of the respondent is deliberate and wilful and liable to be punished under the Contempt of Courts Act, 1971.

5.2 By relying on the decisions of the Supreme Court in the case of **Bigyan Kumar & others Vs. Union of India and others**¹ and **Prithawi Nath Ram Vs. State of Jharkhand and Others**², he would submit that actions of the respondent would also amount to deliberate disobedience. According to learned counsel for petitioners, even the Court has no discretion to interpret the directions but to enforce the said directions. He also placed reliance on the decision of **K.L.V.Prasad, Assistant Director of Mines and Geology, Kothagudem, Khammam district and another**³.

6. Learned Assistant Government Pleader submits that RDO is competent authority to process the application for conversion of agricultural land to non agricultural purposes under the Act, 2006. In

¹ 1988 SCR (30 280= 1988 SCC (3) 603

² Appeal (civil) 5024 of 2000

³ 2011 (6) ALT 119

order to determine the correct processing fee and penalty wherever is required, the RDO has to ascertain the market value of the subject land. He has no authority to assess the market value but has to go by the market value already determined by competent authority. Therefore, he addressed letter to the Tahsildar to furnish the market value and the Tahsildar informed that as per Market Value Guidelines, market value shown in the subject area is Rs.4500/- per sq.yard and there is no agricultural value maintained. According to the learned Assistant Government Pleader, as the amount deposited is not commensurate with the amount required to be paid as per the market value for the subject property as informed by the Tahsildar, no further steps were taken by the RDO. He would therefore submit that the action of the respondent does not amount to deliberate and intentional violation of the Courts directions.

7. I have carefully considered rival submissions and the decisions relied by learned counsel for petitioners.

8. In terms of the provisions contained in Sections 4 and 6, it is necessary for the applicant asking for conversion of the agricultural land to non agricultural purposes to pay the conversion charges and/or penalty. The amount of conversion charges payable depends on the basic value of the land. Petitioners state that the amount deposited by them is as per the basic value of the land in issue. On the contrary according to respondent, the amount deposited is far short of the required fee and therefore he had not taken further steps. It is to be noted that this Court did not specify value for the property and amount to be deposited by the petitioners. Whether petitioners are entitled to insist value of the land as in the year 2007, when for the first time an application was submitted for grant of lay out to HMDA or the RDO is right in insisting payment of conversion charges as per the value now fixed is the issue require consideration in the writ petition.

9. Thus, the issue for consideration is whether stand of respondent that petitioner has not deposited required conversion charges and therefore NOC is not issued would amount to violation of directions of this court?

10. The following conditions must be satisfied before a person can be held to have committed civil contempt: (i) there must be a judgment, decree, direction, order, writ or other process of a court (or an undertaking given to a court); (ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a court (or breach of undertaking given to a court); and (iii) such disobedience of the judgment, decree, direction, order, writ or other process of a court (or breach of undertaking) must be wilful. [**Patel Rajnikant Dhulabhai** (supra)]. Civil contempt arises where the power of the Court is invoked and exercised to enforce obedience to the orders of the court. (**Delhi Development Authority v. Skipper Construction**⁴).

11. Mere disobedience of an order is not enough to hold a person guilty of civil contempt. The element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. Contempt of a civil nature can be held to have been made out only if there has been a wilful disobedience of the order. The Court should not proceed on assumptions, as the Contempt of Courts Act places emphasis on the existence of the ingredient of wilful disobedience, before a person can hauled up for the charge of contempt of a civil nature. (**Dinesh Kumar Gupta v. United India Insurance Co. Ltd.**,⁵). “Wilful means an act or omission which is done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with the purpose of

⁴ (1995) 3 SCC 507

⁵(2010) 12 SCC 770

either disobeying or disregarding the law. [**Patel Rajnikant Dhulabhai** (supra); **Ashok Paper Kamgar Union v. Dharam Godha**⁶].

12. At this stage, it is appropriate to note the averments of respondent in paragraph 6 of the counter affidavit filed in this contempt case, which read as under:

“6. It is submitted that, to implement the interim orders passed in the present case, this respondent addressed a letter to the Tahsildar, Alwal to furnish the market value of the subject land and in reply to the same, the Tahsildar, Alwal informed that as per the information from the Sub Registrar, Vallabnagar, there is no agricultural value for any land in the said village and as per the market value guidelines, the value of the subject land is Rs.4,500/- per sq yards and composite value for flats is Rs.1500/- per sq feet. Hence, this respondent is ready to give the NOC to the petitioners, if the petitioners pay the requisite amounts as per the said value.”

13. As per Act, 2006, RDO is competent authority who can issue NOC for conversion. Quantification of conversion charges and/or penalty depends on value of the property. According to Section 4(2) of the Act, the basic value of the land shall be fixed in such manner as may be prescribed. A.P. Revision of Market Value Guidelines Rules, 1998 is notified by the State which prescribes detailed procedure to determine value of properties. Once value of the property is determined and notified, the same shall have to be applied for the purpose of assessing stamp duty for registration of deed of conveyance and for any other purpose. Thus, even according to these Rules and instructions, copies of which are furnished by the learned counsel for petitioners, the RDO is not competent to determine the value but only processes the applications made for conversion based on value of the land already assessed. Thus, RDO enquired from Tahsildar, Alwal, the value of the subject land, who in turn informed that the lands in the area are not shown as agricultural lands and the value of the properties are fixed at Rs.4500/- per square

⁶(2003) 11 SCC 1

yard. It appears that the amount deposited by the petitioners is not the amount required as per market value determined in the area.

14. On exhaustive consideration of the precedent decisions on the scope of exercise of power of Contempt by the writ Courts, Division Bench of this Court in Contempt Case No. 2179 of 2016 dated 15.9.2017 held as under:

“22. In examining the question whether there is contempt of court, the court is both the accuser as well as the judge of the accusation. It behoves *the court to act with as great circumspection* as possible, making all allowances for errors of judgment. It is only when a clear case of contumacious conduct, not explainable otherwise, arises that the contemnor must be punished. Punishment under the law of contempt is called for *when the lapse is deliberate* and in disregard of one's duty and in defiance of authority. *To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.* [**Debabrata Bandhopadhyaya v. State of W.B.**⁷; **Kanwar Singh Saini v. High Court of Delhi**⁸]. There must be a clear-cut case of intentional obstruction of administration of justice, to bring the matter within the ambit of the provisions of the Contempt of Courts Act. Contempt proceedings are quasi-criminal in nature, and the standard of proof is the same as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/ rights, including benefit of doubt. [**Kanwar Singh Saini** (supra)].”

15. In the case on hand, it is seen that stage for processing of application for NOC by RDO arises only if petitioners paid the requisite conversion fee along with penalty. In the facts of this case, it cannot be said that by stating that only on payment of required conversion charges he would grant NOC the respondent has violated the directions of this Court, much less deliberately and wilfully, warranting initiation of proceedings under the Contempt of Courts Act. He was only stating what is required by the Act, 2006.

16. Further, Section 12(1) of the Act, 1971 enables the Court to remit the punishment and to accept the apology. Having regard to statutory scheme and to uphold the majesty of the Court, in contempt

⁷AIR 1969 SC 189

⁸(2012) 4 SCC 307

cases respondents invariable offer apology. The statement of respondent has to be seen in the back ground of the issue as analyzed above. The respondent has only expressed apology, more as an abundant caution, having due regard to the majesty of the Court. Mere expression of apology cannot be seen as acceptance of guilt.

17. Therefore, merely because respondent offered apology, in the facts of this case, it cannot be said that the respondent accepted that he has violated the directions of this Court wilfully and deliberately and, therefore, liable for punishment.

18. However, it is made clear that the Court has not expressed any opinion on the claim of the petitioners on the assessment of the market value. If petitioners have grievance on the assessment of the market value as informed by the Tahsildar to the RDO, it is open to the petitioners to work out remedies as available to them.

19. Accordingly, respondent is discharged of contempt and contempt case is closed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE:22-11-2017
TVK

P NAVEEN RAO,J

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