

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CONTEMPT CASE No.1609 OF 2016

Date: 04.12.2017

Between :

The State of Telangana, rep.by the
Principal Secretary to Government,
Revenue Department, Secretariat,
Hyderabad, Telangana State and
Others.

..... Petitioners

And

Sri Mohitosh Jana, s/o. late Tronikhanta Jana,
Aged about 39 years, occu:Business,
R/o.H.No.22-5-396/2, Fathehullah Baig Lane,
Panjesha, Hyderabad, Telangana State and another.

..... Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

CONTEMPT CASE No.1609 OF 2016

ORAL ORDER:

Heard learned Government Pleader for Revenue (TS) and learned senior counsel Sri D.V.Sitarama Murthy for Sri N.C. Das, counsel on record for writ petitioners. The parties are referred as arrayed in the writ petition.

2. Writ Petition No. 25047 of 2015 was filed praying to issue direction in the nature of mandamus declaring the action of the respondents in putting board on the property of the petitioners bearing municipal No. 22-5-794, 795, Kooncha-e-Fatheullah, Mir Chowk, Hyderabad and forcibly and illegally trying to dispossess the petitioners without following the due process, same amounting to colourable exercise of power, violates principles of natural justice, arbitrary and unconstitutional. Petitioners filed WPMP No. 32508 of 2015 praying to restrain the respondents by way of injunction from interfering with the possession of the petitioners' property, above mentioned, without following the due process of law. While issuing notices to the respondents, by order dated 20.8.2015, this Court passed the following order:

“The parties are directed to maintain status quo, obtaining as on today.”

3. State of Telangana, represented by its Officers filed Contempt Case No. 1650 of 2015 alleging that directions of this Court dated 20.8.2015 are violated and petitioners trespassed, erected shed covered by tarpaulin sheets, fixed CCTV cameras,

were making idols and removed the sign board erected by the respondents.

4. In response to the notice issued in the contempt case, petitioners filed memo/affidavit deposed by Mohitosh Jana/first petitioner. In the memo/affidavit it is stated that petitioners are artisans and are making Ganesh idols during Ganesh festival and Durga idols during Dasara festival, which falls in rainy season and to protect the idols, plastic tarpaulin sheets were put above the idols. It is further stated that on 10.6.2016 they have removed those plastic tarpaulin sheets and in evidence photographs were also filed. In view of the submission of the learned Government Pleader that petitioners have complied with the order of status quo and *restored the possession of the subject property as on the date when the interim order was passed*, by order dated 1.7.2016, the memo filed on behalf of the respondents and photographs filed by learned Government Pleader were taken on record and Contempt Case No. 1650 of 2015 was closed.

5. The present contempt case is filed by the respondents alleging that petitioners have again trespassed into the subject property and erected temporary shed with tarpaulin sheets, kept bamboo sticks and other material and are making idols and same amounts to violation of status quo order and thus liable for being punished.

6. To complete the narration, it is necessary to note that petitioners filed WPMP No. 34361 of 2016 to withdraw the writ petition No. 25047 of 2015. On 18.8.2016, when the withdrawal petitioner was considered, the Court was informed about the

earlier violation; filing of C.C. No. 1650 of 2016 and undertaking given to the Court to remove the encroachments. The Court was informed by the learned Government Pleader that petitioners restored the possession of the subject lands to the Government. After recording the said statement of the learned Government Pleader, the Court permitted to writ draw the writ petition. Further, the Court observed that it is open for the respondent authority to protect the subject lands, since it is already restored to the Government. Pending WPMPs were also closed. It appears petitioners filed WPMP No. 36070 of 2016 praying to clarify the observations made by the Court in the order dated 18.8.2016. It appears, the learned single Judge observed that the Court has only recorded the statements but has not adjudicated the rights of the parties.

7.1. It is the forceful submission of the learned Government Pleader that the action of the petitioners in again erecting tarpaulin sheds, installing CCTV cameras, storing bamboo sticks and other material and making idols amounts to violation of the directions of the Court. He would contend that the said action of the petitioners is deliberate and wilful, therefore liable to be punished.

7.2. According to learned Government Pleader, this Contempt Case is maintainable notwithstanding the subsequent withdrawal of the writ petition. He would submit what is alleged in the contempt case is violation of the directions of the Court during the subsistence of the interim order. It is further contended that having violated the *status quo* order, petitioners have

mischievously withdrawn the writ petition. Withdrawal of writ petition itself was not *bona fide*.

8.1. Learned senior counsel Sri D V Sitarama Murthy would submit that as the writ petition itself was dismissed as withdrawn by order dated 18.8.2016 all the earlier interim orders would automatically stand dissolved and, therefore, status quo order earlier granted by the court cannot be enforced after 18.8.2016. According to senior counsel, as contempt case is instituted after dissolution of the interim orders it is not maintainable.

8.2. In support of the said contention, learned senior counsel relied on the following decisions:

- i) Prem Chandra Agarwal and another Vs Uttar Pradesh Financial Corporation and another¹;**
- ii) Jaipur Municipal Corporation Vs. C.L.Mishra²;**
- iii) Bharat Coking Coal Limited Vs State of Bihar and others³;**
- iv) Shiv Shankar and others Vs Board of Directors, UPSRTC and another⁴;**
- v) M/s. Mile Stone Soft Tech Pvt Ltd Vs. Nidhi Chhibber⁵;**
- vi) Richardson Vs Richardson⁶;**
- vii) Santhi Kumari, IAS, Secretary, A.P. Social Welfare Residential Educational Institutions Society, Hyderabad Vs. K Ravi and another⁷; and**
- viii) G.Naganna Vs. Manmohan Singh and ors⁸.**

¹ (2009) 11 SCC 479

² (2005) 8 SCC 423

³ 1987 (Supp) SCC 394= MANU/SC/0163/1987

⁴ 1995 Supp (2) SCC 726

⁵ Contempt Case (C) No.2 of 2015 High Court of Chattisgarh at Bilaspur dated 8.5.2015

⁶ 218 Minn.42 (Minn.1944) Supreme Court of Minnesota

⁷ 2003 (2) ALD 460

⁸ MANU/AP/0585/2017

8.3. Learned senior counsel would further contend the interim order granted has to be seen in the light of the claim of the petitioners that they are in possession and authorities sought to dispossess them and that *status quo* order is with reference to possession. In terms thereof, whoever is in possession is entitled to enjoy the property as per their convenience. Therefore, mere erecting of tarpaulin sheds, installing idols, bamboo sticks and CCTV cameras is no ground to hold that petitioners have violated the orders of the Court and such violation is deliberate and wilful warranting initiation of contempt proceedings.

9. Two points arise for consideration:

- i) Whether erection of tarpaulin covered shed and storing of the material by petitioners amounts to violating order of *status quo* issued on 20.08.2015 in WP MP No.32508 of 2015?; and
- ii) Whether on the alleged violation of interim orders, contempt proceedings are not maintainable subsequent to withdrawal of writ petition ?

10. According to the documents enclosed to the contempt case, it appears that the Special Revenue Inspector vide his letter dated 13.7.2017 informed the Tahsildar, Bahadurpura mandal that he visited the subject Government land, found that the gate of the premises is open, some material is stored, labour are working under tarpaulin covered shed and idols are being made. He seems to have also furnished photographs. On 20.7.2016 the Special Revenue Inspector reported to the Tahsildar that as per the instructions of Tahsildar, he went to the subject premises along with Village Revenue Officer and noticed that “*Mohitosh Jana*

illegally occupied the government land and erected temporary sheds with tarpaulin sheets with bamboo sticks and kept the idols and other material". On 27.7.2016 the Tahsildar, Bahadurpura issued notice to the petitioners stating that petitioners have violated the directions of the Court and that in spite of several oral instructions from 20.7.2016 they have not complied with the instructions to restore the possession of the subject land. Petitioners were therefore directed to remove temporary shed covered with tarpaulin sheets, bamboo sticks, idols and other material and restore the possession of the subject property. Based on these reports, the Tahsildar lodged written complaint with the Inspector of Police, Mir Chowk police station on 3.8.2016. In the said complaint, he has reiterated the contents of notice dated 27.07.2016 and requested to register the crime.

11. By referring to the photographs claimed to have been taken on 15.6.2016, learned Government Pleader would contend that fresh activity has commenced in the subject premises after that date and these actions of petitioners' amount to deliberate and wilful violation of status quo order and thus committed contempt of this court. However, there is no clarity on when locks were put up and who has put up the locks. In the photographs no seals on locks are visible and breaking of seals is not clear. Further more, it is not clear from the material on record as to who is in possession. Claim on possession is seriously disputed by rival parties.

12. Prayer in the writ petition is against alleged dispossession by respondents. Since the issue of possession was

disputed, the Court directed maintenance of status quo by interim order dated 20.8.2015. Thus, as the issue in the writ petition is with reference to possession and interference, the effect of interim order is to maintain status quo on possession. The Court has not issued further direction on maintaining physical features of the property or against creating third party interests. In the facts of this case, it is to be noted that as the order of this Court was only to maintain *status quo*, as per prayer sought in the writ petition and in the WPMP, *status quo* applies to possession only.

13. To hold a person guilty of violating the directions of the Court and liable to be proceeded under the Contempt of Courts Act, 1971 the essential ingredients are, there must be disobedience of the directions issued and such disobedience must be deliberate and wilful. As the contempt proceedings are quasi criminal, it must be specifically proved that the directions of the Court are violated and such violation is deliberate and wilful. Interim direction was to maintain status quo and material on record do not conclusively establish that respondents were in possession and that possession was disturbed by petitioners after interim orders were passed.

14. In the facts of this case, as noted above, the Court is not persuaded to hold petitioners guilty of disobeying directions of the Court, warranting initiation of proceedings under Contempt of Courts Act. Thus, point no.1 is answered in favour of petitioners and petitioners are discharged from contempt proceedings.

15. In view of my decision on scope of the order of *status quo* and discharging petitioners from contempt proceedings, no opinion is expressed on the second issue. It is made clear that

the Court has not expressed any opinion on merits of the matter including the issue of possession and the observations made herein above are only to decide whether petitioners committed contempt of this court. It is always open to the respective parties to work out their remedies as available in law. Contempt case is accordingly closed.

Miscellaneous petitions if any pending shall stand closed.

There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 04.12.2017
tvk



HONOURABLE SRI JUSTICE P. NAVEEN RAO



CONTEMPT CASE No.1609 OF 2016

Date: 04.12.2017

tvk