

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

C.C.No. 1235 OF 2016

DATED 23RD FEBRUARY, 2017

Between:

Sri Ganganamma Mutyalamma Potharaju Varla Devasthanam,
Rep. by its Managing Trustee Sri Vandrasi Kanaka Rao,
S/o late Satyanarayana, 42 years,
R/o D.No. 9-35-21, Illipalli Narasimharao Street,
Kothapet, Vijayawada, Krishna District ... Petitioner

AND

Veera Pandyan,
Commissioner,
Municipal Corporation of Vijayawada,
Krishna District ... Respondent

Counsel for the petitioner : Sri K.Raja Reddy

Counsel for the respondent : Sri R.Sudheer

THE COURT MADE THE FOLLOWING

JUDGMENT:

The petitioner herein filed W.P.No. 37654 of 2015 with the grievance that despite final decree granted in its favour on 24-04-2002 in O.S.No. 213 of 1998 on the file of the Court of IV Additional District Judge, Vijayawada, respondent Nos. 2 and 3 in the Writ Petition were trying to remove the temple structures raised by the petitioner. The said Writ Petition was disposed of by order dated 19-11-2015 giving liberty to the petitioner to seek enforcement of decree for injunction if the same was attempted to be violated. The Court has also placed on record the statement of Sri T.Bala Swamy, learned standing counsel for the Municipal Corporation of Vijayawada, that his client was not proposing to remove any part of the temple structures. Alleging that, in spite of the said undertaking, the subordinates of the respondent have demolished the temple on the intervening night of 02/03-06-2016, the Writ Petitioner filed this contempt case.

2. The respondent filed a counter affidavit, wherein it is stated *inter alia* stated that since no relief was granted to the petitioner with respect to the temple and the petitioner was relegated to the remedy under Order 21 Rule 32 of the Code of Civil Procedure (for short, 'C.P.C.') for execution of the decree for injunction, demolition of temple structures does not constitute violation of the order of this Court. He has further averred that till date, the petitioner has not filed any execution petition and that as far as the shops are concerned, no shop owner has raised any grievance against the Corporation.

3. At the hearing, Sri Koneti Raja Reddy, learned counsel for the petitioner, submitted that though no positive directions were issued by this Court in favour of the petitioner, the statement of learned standing counsel was, however, recorded in the order passed in the Writ Petition to the effect that the respondent was not proposing to remove any part of the temple structures and that in

violation of the said statement, the subordinates of the respondent have demolished the temple. No doubt learned standing counsel for Vijayawada Municipal Corporation has made a statement, which was placed on record by the Court, that the Corporation was not proposing to remove any part of the temple structures. While recording the said statement, this Court, however, in unequivocal terms held that the remedy of execution petition under Order 21 Rule 32 of C.P.C. is available to the petitioner and the Writ Petition is not an appropriate remedy to prevent the respondent from acting in violation of the decree. Accordingly, the Writ Petition was disposed of. In my opinion, in the absence of any relief granted to the petitioner or direction issued to the respondent, demolition of the temple cannot be considered as constituting violation of the order of this Court. Though this Court has merely recorded the statement of the learned standing counsel, the Writ Petition was not disposed of based on the said statement. Therefore, the statement of learned standing counsel, as recorded by this Court, **does not** have binding force so as to punish the respondent if he has acted in violation thereof.

4. For the aforementioned reasons, the contempt case is dismissed.

C.V.NAGARJUNA REDDY, J.

Date: 23-02-2017.

JSK