

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

L.P.A.NO.10 OF 2017

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Clause 15 of the Letters Patent arises out of the order dated 13.10.2017 passed by a learned Judge of this Court in Contempt Case No.393 of 2016. It is the contention of the appellants, who are the 7th and 8th respondents in the said contempt case, that in passing the said order, the learned Judge transgressed the limits of contempt jurisdiction.

Contempt Case No.393 of 2016 was filed by the petitioner in W.P.No.28398 of 2015 alleging willful disobedience to the order dated 17.11.2015 passed therein disposing of the case with directions. By the said order, the learned Judge took note of the report submitted by the Greater Hyderabad Municipal Corporation (GHMC) and observed that effective measures were being taken by the officials of the GHMC to prevent illegal construction and opined that no further adjudication of the writ petition was necessary except to the extent of giving a direction to the authorities, including the GHMC, to ensure that the 8th and 9th respondents in the writ petition did not carry on further construction without permission and also to remove the unauthorized constructions carried on by them, after following the due process of law.

The contempt case was instituted alleging that on 22.02.2016, the 8th and 9th respondents broke the sealed locks at the premises and started dumping construction material. The petitioner also alleged that they started construction activity. Complaining that despite her representation, the GHMC officials were not taking action and the illegal construction was being carried

out day in and day out putting at risk the abutting Macca Masjid, a protected historical archeological monument, the petitioner filed the contempt case.

Be it noted that the 8th and 9th respondents in the writ petition are arrayed as the 7th and 8th respondents in the contempt case. A series of orders seem to have been passed by the learned Judge in the said contempt case on various dates. Significantly, the 7th and 8th respondents seem to have placed an undertaking affidavit before the learned Judge through their earlier counsel, wherein the 7th respondent undertook to remove the unauthorized constructions. By order dated 26.08.2016, the learned Judge took note of the said undertaking affidavit and the submission made by the learned counsel for the 7th and 8th respondents and adjourned the matter directing them to remove the entire unauthorized construction as mentioned in the report dated 17.07.2016 of the Commissioner, GHMC.

Aggrieved by this order, the 7th and 8th respondents in the contempt case preferred L.P.A.No.5 of 2016 through another counsel. The said LPA was disposed of by a Division Bench *vide* order dated 22.09.2016 permitting the appellants to move the learned Judge explaining the circumstances under which the affidavit of undertaking was filed and as to what they meant by unauthorized constructions and as to how the counsel got it referable to the report dated 17.07.2016. The Division Bench also made it clear that it would be open to the appellants to contest the maintainability of the contempt case in the light of the fact that the writ petition was disposed of without notice to them and only on the basis of a report filed by the GHMC in the writ petition. Thereafter, when the matter came up before the learned Judge on 09.06.2017, the GHMC filed a report stating that during the inspection on 31.05.2017, it was noticed that the 7th and 8th respondents had not taken up any demolition work.

Sri Mirza Nisar Ahmed Baig, the present counsel appearing for the 7th and 8th respondents in the contempt case, disputed the correctness of that report and stated before the learned Judge that his clients had demolished the unauthorized portion of the construction as referred by them in their affidavit. The learned Judge thereupon appointed an Advocate Commissioner to inspect the site and submit a report. By way of the order dated 13.10.2017, the learned Judge found fault with the report submitted by the Assistant City Planner, Circle No.V, GHMC, as it did not disclose whether the ground floor columns had been removed and, if not, the reason therefor. The Assistant City Planner who was personally present before the learned Judge sought one more opportunity to remove the columns which were technically feasible of removal and the learned Judge deemed it appropriate to grant such opportunity and adjourned the matter to 10.11.2017 to enable the Assistant City Planner to file a report, after getting all the columns on the ground floor other than those, the removal of which may endanger the entire structure, removed. It is against this order that the 7th and 8th respondents in the contempt case preferred this appeal.

Sri Mirza Nisar Ahmed Baig, learned counsel, would state that pursuant to the earlier order in L.P.A.No.5 of 2016, his clients submitted their counter setting out their stand and their claim that they were not liable to be hauled up for contempt. He would submit that despite the same, the learned Judge is proceeding with the contempt case. He would vociferously argue that his clients are not guilty of any willful disobedience whereby they could be indicted of committing contempt.

This Court finds no merit in these submissions. In the event the learned Judge eventually finds the appellants guilty of contempt, they would have the remedy of preferring an appeal under Section 19 of the Contempt

of Courts Act, 1971, at that stage. By way of an appeal under Clause 15 of the Letters Patent, it is not open to them to raise this issue now. Well settled is the principle that an appeal under Clause 15 of the Letters Patent would only be available to the alleged contemnor in a contempt case only if the learned Single Judge, seized of such contempt case, transgresses the recognized limits of contempt jurisdiction. It is only to this limited extent that an appeal in this regard would lie.

Reference may be made to MIDNAPORE PEOPLES' CO-OPERATIVE BANK LIMITED V/ s. CHUNILAL NANDA¹, wherein it was observed that in the course of contempt proceedings, it is not appropriate to adjudicate or decide any issue relating to merits of the dispute between the parties. The Supreme Court further observed to the effect that the learned Judge, seized of such contempt case, has to decide whether there is any willful disobedience of his order and if so, punish the contemnor for contempt, but could not in the course of such contempt proceedings make an independent order or give further directions.

Earlier, in MD.KAMARUDJAMA, MANDAL REVENUE OFFICER, HANAMKONDA V/ s. ELABOINA RAMESH², a Division Bench of this Court observed that while no appeal would be maintainable under Clause 15 of the Letters Patent against an order or direction issued by a learned Single Judge for enforcing the original order passed in terms thereof, any order passed or directions issued, which are in variance to the original order passed, operate as an adverse judgment affecting the rights of the contemnor and would thus be appealable under Clause 15 of the Letters Patent.

It is therefore not open to the appellants to now seek examination of the issue as to whether they are liable to be hauled up for contempt or

¹ (2006) 5 SCC 399

² 1999 (1) ALD 715

whether the learned Judge has taken note of what they have stated in their counter. That stage is yet to come. The original order passed by the learned Judge in the writ petition required the GHMC and the authorities to ensure that the appellants herein did not carry on further construction without permission and also to remove the unauthorized constructions carried on by them. The orders passed by the learned Judge in the course of the contempt case are aimed at securing compliance with this original order. No further direction at variance with the original order was passed. More so, the order dated 13.10.2017, from which this appeal arises, does not indicate any transgression from the original direction in the writ petition.

Though the learned counsel would also seek to assail the order passed in the writ petition, we are of the opinion that rightness of the said order cannot be examined in contempt proceedings and, in consequence, in an appeal arising therefrom. (See UNION OF INDIA V/ s. SUBEDHAR DEVASSY PV³).

On the above analysis, we find no cause to exercise appellate jurisdiction in the context of the order dated 13.10.2017 passed by the learned Judge in Contempt Case No.393 of 2016. The appeal is accordingly dismissed. No order as to costs.

SANJAY KUMAR, J

J. UMA DEVI, J

21st NOVEMBER, 2017

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³ AIR 2006 SC 901