

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CC.1179 of 2016

ORDER:

Heard and perused the material available before the Court.

2. This is an application filed under Sections 10 to 12 of the Contempt of Courts Act, 1971, alleging willful disobedience of the order of this Court dated 25.05.2016 passed in W.P.No.16812 of 2016.

3. Initially, the petitioner herein filed the present contempt case, impleading three respondents viz., Panchayat Secretary, Pangara Grampanchayat, Nizamabad Mandal and District (second respondent in the writ petition), Tahasildar, Mandal Office, Khaleelwadi, Nizamabad (third respondent in the writ petition) and the Executive Engineer, Roads and Buildings Division, Nizamabad (fourth respondent in the writ petition).

4. Subsequently, petitioner herein filed C.A.No.609 of 2016 seeking impleadment of respondents 4 to 10 viz., District Panchayat Officer, Nizamabad District, District Collector, Nizamabad District, Joint Collector, Nizamabad District, Revenue Divisional Officer, Nizamabad District, Superintendent of Police, Nizamabad District, Sub-Inspector of Police-cum-Station House Officer, Pangra Police Station, Nizamabad, Nizamabad District and the Principal Secretary, Department of Panchayat Raj, Secretariat, Hyderabad and the said application was allowed by this Court.

5. Petitioners herein filed the main writ petition for the following relief:

“To declare the action of the respondents 3 and 4 (Tahsildar and Executive Engineer), in causing interference by obstructing petitioners in construction of the compound wall in their own patta land, peaceful possession and Enjoyment of the petitioners in respect of their own land admeasuring Ac.2-00 Gts in survey No. 414, 415, 406, 410 & 416 situated at Pangra (B)

Village Shivar, Manadal & District Nizamabad, without any manner of right, as being illegal, arbitrary and violation of Article 21 and 300-A of the Constitution of India.”

6. This Court, while ordering notice before admission on 26.05.2016, passed the following order in W.P.No.16812 of 2016:

“There shall be no interference by the respondents with regard to the construction of the compound wall or with regard to the possession of the petitioners, if there is valid permission.”

7. As stated above, initially contempt case was filed against the respondents 1 to 3 on 03.03.2016, alleging that on the directions of the respondents 1 and 3, the second respondent/Panchayat Secretary issued a notice dated 14.06.2016, demanding to stop construction of the compound wall while threatening legal action and the same amounts to contempt of Court.

8. Second respondent in the writ petition filed a counter affidavit and at paragraph No.7 he offers his explanation stating that the petitioners, under the guise of the orders passed by this Court dated 26.05.2016, proceeded with the construction of compound wall by deviating the sanctioned plan without leaving 9 meters from nala of Pangra Vagu which amounts to violation of the Rule 21 of Layout and Building Rules, 2002 and that he was constrained to issue a notice vide Lr.No.GPP/03/68/2015-16 dated 14.06.2016. It is also stated at paragraph No.10 of the said counter affidavit that he acted as per the directions of the superior authorities and on the ground that he neglected his duties, the District Collector vide proceedings No.543/2016/B1-2 dated 10.08.2016 placed him under suspension.

9. On 21.07.2016, the writ petitioner filed a better affidavit stating that pending the Contempt Case before this Court, the fourth respondent, D.P.O

also affixed orders of cancellation of construction of compound wall permission vide proceedings No.B5/374/2016 dated 29.06.2016 and the fourth respondent immediately on the next day i.e., on 30.06.2016 affixed a show-cause notice for dismantling the compound wall giving the petitioner three days time for the explanation and demolished the compound wall on 04.07.2016. It is also stated in the said better affidavit that the petitioners served a copy of the interim orders of this Court to the 9th respondent i.e., Station House Officer, Pangara Police Station and made a request to stop demolition of the compound wall, but the S.H.O neglected their request and provided protection to the respondents while demolishing the compound wall. Respondent No.4 i.e., the District Panchayat Officer, Nizamabad District filed counter affidavit stating that at the time of passing the Memo dated 23.05.2016, petitioners did not serve copy of the orders of this Court dated 26.05.2016 in the present writ petition to the District Panchayat Officer.

10. The respondent No.9, Station House Officer also filed a counter affidavit stating that the Divisional Panchayat Officer, Nizamabad addressed a letter dated 04.07.2016 to him stating that the District Panchayat Officer, Nizamabad issued orders dated 29.06.2016 for demolishing the compound wall in Sy.Nos.406, 410, 414, 415 and 416 and requested the police to provide police protection to them to prevent any law and order problem. It is further stated that pursuant to the said requisition of the Divisional Panchayat Officer, Nizamabad, the police provided protection to the Panchayat Raj Authorities in demolishing the said wall and to that effect necessary entries were also made in the Station General Diary and no untoward incident took place at the time of providing police protection.

11. Since it is a contempt case, strict proof of having knowledge on the part of the respondents is required to be established by the parties pleading willful disobedience. According to the petitioners herein, despite the orders of this Court, the respondents herein undertook and executed the demolition of the compound wall in contravention and in disobedience of the orders passed by this Court. A reading of letter bearing Lr.No.GPP/03/68/2015-16, dated 14.06.2016, in clear and categorical terms discloses that by virtue of the said letter the Panchayat Secretary, Pangara Grampanchayat, Nizamabad District, first respondent herein, directed the petitioners herein to stop constructions. This Court, in fact issued direction on 26.05.2016, directing no interference of the respondents with regard to the construction of the compound wall or with regard to the possession of the petitioners, if there is valid permission. It is not at all the case of the respondents herein that by the time of issuing the said notice dated 14.06.2016, the permission granted in favour of the petitioners herein was not in force. It is also significant to note that the knowledge of the first respondent Panchayat Secretary as regards existence of the orders of this Court is also not in dispute, as the said notice dated 14.06.2016 specifically refers to the orders of this Court at reference No.7. Therefore, by any stretch of imagination, it cannot be concluded that the first respondent Panchayat Secretary acted unintentionally. It is also to be noted that there is no material placed on record to show that the other respondents have violated the orders of this Court with knowledge of the said orders. The explanation sought to be offered by the Panchayat Secretary that he acted on the instructions of the higher authorities cannot be a ground for condoning the lapses on the part of the Panchayat Secretary in adhering to the orders of this Court. The Judgment of the Hon'ble Supreme Court in

the case of *D.P.GUPTA v. PARSURAM TIWARI AND ANOTHER*¹, cited by the learned counsel for the first respondent, in the facts and circumstances of the case, would not render any assistance to the first respondent.

12. For the aforesaid reasons, this Court finds the Panchayat Secretary, Pangra, Nizambad District/first respondent herein guilty of willfully disobeying the orders of this Court dated 26.05.2016 passed in W.P.No.16812 of 2016 and accordingly convicts him under the Contempt of Courts Act, 1971 by awarding Simple Imprisonment of 15 days and a fine of Rs.1,000/- (one thousand only). In the event of non-payment of the said fine, he shall undergo Simple Imprisonment of another 15 days. To the extent of other respondents, Contempt Case is dismissed and it is open for the petitioners to seek damages as per law in an appropriate forum of law.

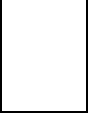
13. On the request of the learned counsel for the Panchayat Secretary/first respondent herein, the conviction remains suspended for a period of one month.

A.V.SESHA SAI, J

Date:22.09.2017

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¹ (2004) 13 SCC 746



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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Dated 22.09.2017

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