

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CONTEMPT CASE No.1577 of 2016

ORDER :

This Contempt Case is filed alleging wilful disobedience of the order dt.21-07-2016 in W.P.M.P.No.29755 of 2016 in W.P.No.24153 of 2016.

2. The petitioners were owning premises bearing D.No.41-22/1-58 of extent 39 sq. yds and 34 sq. yds respectively at Bramarambapuram, Krishna Lanka, Vijayawada, Krishna District.

W.P.No.21197 of 2016.

3. In the year 2016, Krishna Pushkaram was to be held in the month of August, 2016. When there was an attempt by the Vijayawada Municipal Corporation and the Revenue officials to forcibly dispossess the petitioners from the said properties for construction of 'pushkara ghats', petitioners filed W.P.No.21197 of 2016.

4. On 29-06-2016, this Court, after hearing both sides, passed an interim order staying the demolition/eviction of petitioners from their respective properties except in accordance with law.

5. Petitioners contend that this order copy was despatched on 30-06-2016 and the same was also communicated to the Vijayawada Municipal Corporation as well as Revenue officials, who were represented by the District Collector, Krishna District in that Writ

Petition, but the Officials of the Vijayawada Municipal Corporation declined to give acknowledgment to the same and copies of the High Court orders were affixed to the subject premises and also displayed through a flexi banner.

6. Petitioners asserted that on 13-07-2016, a notice was issued by the Vijayawada Municipal Corporation to submit the title deeds possessed by petitioners, failing which the respondents would take action as per the Rules in force. Petitioners submitted explanation thereto by enclosing documents of title with acknowledgment. No speaking order disputing the title of the petitioners was passed thereafter.

DEMOLITION ON 18.7.2016 IN VIOLATION OF INTERIM ORDER IN W.P.NO.21197 OF 2016

7. Suddenly on 18-07-2016, according to petitioners, the structures in the property owned by them were demolished in violation of the order dt.29-06-2016 passed by this Court in W.P.No.21197 of 2016.

W.P.No.24153 of 2016

8. Petitioners were then forced to file W.P.No.24153 of 2016 to protect their possession of the property and they sought therein a declaration that the demolition of their houses by the Vijayawada Municipal Corporation was in violation of the order dt.29-06-2016 passed by this Court in W.P.No.21179 of 2016, and a further direction

to respondents not to dispossess or take over physical possession of their house properties.

9. They also filed W.P.M.P.No.29755 of 2016 in the said Writ Petition for a direction to the respondents not to take over physical possession of the houses of the petitioners and not to interfere in any manner with the peaceful possession and enjoyment of their property pending Writ Petition.

10. On 21-07-2016, this Court granted interim order in the said application.

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11. Petitioners contend that after the said order was passed, the respondents *forcibly took over physical possession* of the premises and laid damber road (black top road) over their land on 29-07-2016 by violating the orders passed by this Court. Therefore they filed the present Contempt case against the respondents.

12. Notice before admission was ordered to respondents on 10-03-2017. Sri R.Sudheer, counsel for 1st respondent took notice on 07-04-2017 and sought time to file a counter affidavit. The case was then adjourned to 21-04-2017, 26-04-2017, 28-04-2017 and 07-07-2017, but no counter affidavit was filed. On 04-08-2017, Smt.Jhansi, Advocate took notice for 1st respondent and again sought time to file counter affidavit. The case then underwent adjournments to 11-08-2017 and 18-08-2017 on which date time was extended as a

last chance to 24-08-2017 to file counter affidavit on behalf of 1st respondent.

13. Since no counter-affidavit was filed by 1st respondent even on 24-08-2017 though Contempt Case was filed on 19-08-2016, notice in Form-I was issued to 1st respondent on 24-08-2017. Later counter-affidavit was filed by 1st respondent on 21-09-2017.

THE STAND OF 1ST RESPONDENT IN HIS COUNTER AFFIDAVIT

14. In the counter-affidavit filed by 1st respondent, who was the Commissioner of Vijayawada Municipal Corporation at that time, he stated that he had taken up arrangements for conduct of Krishna Pushkarams in the year 2016 commencing from 12-08-2016 to 23-08-2016; there were 800 dwellers in the locality and negotiations were held with all persons who were to be affected by road widening by offering compensation as well as allotment of alternative housing under JNNURM Housing flats. He contended that there was an urgent need and necessity to take over the land of petitioners for laying a road and that a road was laid on petitioners' properties.

15. No date is however mentioned as to when the road was laid on 1st respondent's instructions by the officials of the Vijayawada Municipal Corporation. This fact, being within the exclusive knowledge of the 1st respondent, his silence on the issue makes the Court to draw an inference that he got the road laid on petitioners' properties on 29-07-2016, as contended by them.

16. It is alleged in his counter that petitioners initially agreed for benefits extended to similarly situated persons in the locality, but later demanded for some more additional benefits, which were pending consideration; that there was an *oral* agreement between the petitioners and 1st respondent; and they did not resist the laying of the road. According to him, the petitioners were always eager to receive the benefits being offered by respondents.

17. The 1st respondent then justifies his violation of the interim order of the Court by saying that since about 2 crores of pilgrims from different parts of the country were expected, it was necessary to take possession of the petitioners' property and lay a road on it, and that this was in the larger public interest.

18. It is also stated that subsequently the Municipal Council of Vijayawada Municipal Corporation approved through resolution dt.15-09-2017 grant of TDR bonds @ 1:2 to petitioners to the extent of site that they lost and also for allotment of a housing flat each under JNNURM scheme to the petitioners; and that they were issued such TDR bonds and house allotment letters on 20-09-2017. It is asserted that petitioners accepted the benefits and undertook not to pursue the Contempt Case on merits.

19. It is also asserted that there was a *written* understanding between the Corporation and petitioners about the benefits which were extended to them and that due to inadvertence, the property of

petitioners had to be demolished since it was contiguous to other properties which were all required for the purpose of laying the road.

20. However, the 1st respondent did not file before this Court any such written agreement between the parties.

21. It is asserted by the 1st respondent that he did not have any intention to violate the orders of the Court and there was no disobedience of the order passed by this Court. It is further stated that if the Court comes to the conclusion that the 1st respondent committed contempt, he is tendering an unconditional apology, which is prayed to be accepted.

THE COUNTER AFFIDAVIT OF THE 2ND RESPONDENT

22. The 2nd respondent filed a counter-affidavit stating that the physical possession of the land was taken by 1st respondent and that he is not responsible in any way for the dispossession of petitioners. However, the 2nd respondent stated that the 1st respondent acted in the interest of security and safety of the people in Vijayawada and that the action of the 1st respondent should be *hailed* since it was taken in the interest of people coming for Pushkarams. He blamed the petitioners for their foolishness in risking the lives of other people by refusing to give up their land.

23. He further stated that the land of petitioners was precariously located abutting the River Krishna and every year there was a threat to their lives due to possible floods. It is not the case of the

2nd respondent that at the time of demolition of petitioners' property or at the time of their dispossession, there was any such threat. So this is a ruse to mislead the Court and give a wrong impression that petitioners were benefited by their dispossession.

24. He further pleaded that petitioners are purchasers of assigned lands and that this was contrary to the A.P.Assigned Lands (Prohibition of Transfer) Act,1977. This is also a dubious plea since no proceeding was ever initiated under the said Act against the petitioners or their predecessors.

25. Though this Court got a report from the II Additional District-cum-Metropolitan Sessions Judge, Vijayawada dt.07-12-2017 on the aspect of *date of demolition* of the structures erected by petitioners, since it is not in dispute that the demolition took place prior to the passing of order dt.21-07-2016 in W.P.M.P.No.29755 of 2016 in W.P.No.24153 of 2016, the said report is not of much value. The question when the dispossession of petitioners took place was however not referred to the said Court for submission of it's report.

26. The crux of the question in the Contempt Case is "*whether there is wilful disobedience of the order dt.21-07-2016 in W.P.M.P.No.29755 of 2016 in W.P.No.24153 of 2016?*"

27. It is not in dispute that there is an order granted by this Court on 29-06-2016 in W.P.No.21179 of 2016 filed by petitioners restraining

the respondents from demolishing or evicting petitioners from their houses except in accordance with law.

28. It is the admitted case of 1st respondent in the enquiry before the II Additional District Judge-cum-Metropolitan Sessions Judge, Vijayawada that he demolished the structures on 18-07-2016 after said interim order was passed by this Court. However no proceedings for contempt appear to have been taken by petitioners for this act.

29. Thereafter this Court passed the order on 21-07-2016 in W.P.No.29755 of 2016 in WP.No.24153 of 2016 not to take over physical possession of the petitioners' properties and also not to interfere with their possession and enjoyment of the said properties.

30. The petitioners allege in this CC that on 29-07-2016 they were dispossessed in spite of the said order restraining the respondents from physically dispossessing them and a road was laid over the land on 29-07-2016.

31. This allegation of petitioners is not denied specifically by both respondents. In fact they both admit that such a road was laid after dispossessing petitioners.

32. It is however not the case of respondents that the road was laid on petitioners' property *before* the Court passed order on 21-07-2016 in W.P.M.P.No.29755 of 2016 in W.P.No.24153 of 2016. In view of non-traverse of the plea of petitioners by respondents that the road

was laid on 29-07-2016, it has to be inferred that it was laid after the said order.

33. Coming to the defence of respondents that petitioners voluntarily gave up possession of their properties, I am of the opinion that a party who has filed (i) W.P.No.21179 of 2016 and obtained an interim order from this Court not to demolish/evict on 29-06-2016, and (ii) W.P.No.24153 of 2016 in this Court and obtained another interim order on 21-07-2016 not to dispossess him, would not meekly agree orally to surrender the land in his possession to the 1st respondent and allow voluntarily laying of road on his property. Any such oral agreement pleaded by 1st respondent is clearly in the realm of fiction or it is possible that such consent was probably obtained by coercion. It is certainly not consistent with the normal human conduct which is expected of the petitioners.

34. Even otherwise, how the interim order dt.21-07-2016 could be violated even if petitioners consented to the same, is not explained by 1st respondent. The 1st respondent could have approached this Court pleading urgency and the alleged settlement with petitioners, and could have sought modification of the order passed by this Court since there was a 3 week gap between the date of the interim order passed on 21.7.2016 in W.P.M.P.No.29755 of 2016 in W.P.24153 of 2016 and the Pushkarams which were to start only on 12-08-2016 admittedly. But for the reasons known for 1st respondent, he did not do so.

35. Assuming there is any such post facto agreement also between the parties after dispossession by respondents of petitioners from their property in violation of the order dt.21-07-2016 in W.P.M.P.No.29755 of 2016 in W.P.No.24153 of 2016, it does not bind the Court for it is settled law as held in **D.N. Taneja v. Bhajan Lal**¹, that a contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor.

36. In **Salkia Businessmen's Assn. v. Howrah Municipal Corpn**², the appellant Association of Businessman were dislocated by a fly over project from Grand Trunk Road. They entered into a compromise with the respondents who promised to provide alternative accommodation at a different place on the same Road. On the basis of compromise between the parties, the Writ petition was disposed of by the Delhi Court. Later the respondents resiled from it and offered accommodation elsewhere. They again approached the High Court. Both the single Judge and the Division bench rejected their claim. But reversing the said decisions, the Supreme Court held:

“ 8....If courts are not to honour and implement their own orders, and encourage party litigants — be they public

¹ (1988) 3 SCC 26

² (2001) 6 SCC 688

authorities, to invent methods of their own to short-circuit and give a go-by to the obligations and liabilities incurred by them under orders of the court — the rule of law will certainly become a casualty in the process — a costly consequence to be zealously averted by all and at any rate by the highest courts in the States in the country. It does not, in our view, require any extraordinary exercise to hold that the memorandum and terms of the compromise in this case became part of the orders of the High Court itself when the earlier writ petition was finally disposed of on 13-2-1991 in the terms noticed supra, notwithstanding that there was no verbatim reproduction of the same in the order. The orders passed in this regard admit of no doubt or give any scope for controversy. While so, it is beyond one's comprehension as to how it could have been viewed as a matter of mere contract between the parties and under that pretext absolve itself of the responsibility to enforce it, except by doing violence to the terms thereof in letter and spirit. As long as the earlier order dated 13-2-1991 stood, it was not permissible to go behind the same to ascertain the substance of it or nature of compliance when the manner, mode and place of compliance had already been stipulated with meticulous care and detail in the order itself. The said decision was also not made to depend upon any contingencies beyond the control of parties in the earlier proceedings.”(emphasis supplied)

37. So as long as the interim order dt.21.7.2016 in WPMP.No.29755 of 2016 in WP.24153 of 2016 was subsisting, it was incumbent on part of 1st respondent to obey it. He could not have violated it.

38. In the absence of any emergency warranting demolishing of petitioners' structures, the 1st respondent was duty bound to obey the Court orders, and cannot flout them on the pretext of larger public interest.

39. The Greater Hyderabad Municipal Corporation Act,1955 applicable to the Vijayawada Municipal Corporation prescribes that if a Municipal Corporation wants land of a private party, it should either acquire it under an agreement with the land owner (Sec.146) or acquire it as per the law relating to acquisition of properties (Sec.147). But the conduct of the respondents indicates that they deliberately did not do so and wanted to grab the petitioners' properties highhandedly.

40. So I hold that there has been a blatant and wilful disobedience of the order dt.21-07-2016 in W.P.M.P.No.29755 of 2016 in W.P.No.24153 of 2016 by 1st respondent in the CC. The same is not liable to be ignored notwithstanding the grant of TDR bonds or allotment of housing flats plots under JNNURM scheme to petitioners or by offer to pay compensation to them.

41. Having regard to the tone and tenor of the counter-affidavit in the earlier paragraphs justifying the dispossession of petitioners from their property in spite of a Court order stopping him from doing so, I am also of the opinion that there is no contrition in the apology tendered by 1st respondent. Therefore the apology tendered by 1st respondent is rejected.

42. Coming to the 2nd respondent, in his counter-affidavit he has justified the action of 1st respondent and openly praised his conduct by pleading that there is every likelihood of happening of a catastrophe

during the rainy seasons and floods to the Krishna river. This is an absurd defence of the action of the 1st respondent since the taking of petitioners' properties by the 1st respondent was not on account any flood in July 2016.

43. It is important to note that a notice dt.13-07-2016 was issued under Section 434 of the Vijayawada Municipal Corporation Act by 1st respondent, which was marked as Ex.A-1 in the enquiry before the II Additional District Judge-cum-Metropolitan Sessions Judge, Vijayawada adverting to orders issued by 2nd respondent to widen the existing 18' wide burial ground road to 30' for Krishna Pushkarams, 2016 while asking the petitioners to produce ownership documents. But in the counter-affidavit filed by both respondent Nos.1 and 2, there is no reference to this instruction of the 2nd respondent to the 1st respondent strangely. Though the 2nd respondent does not appear to have had any specific role in actual dispossession of petitioners, this Court records its disapproval for the attitude exhibited by 2nd respondent in praising the act of 1st respondent in wilful disobeying the order passed by this Court. This attitude of the 2nd respondent also exhibits utter contempt of the Court orders passed by this Court.

44. It is settled law that the power conferred on the Court under Article 215 of the Constitution of India to punish contempt of itself necessarily includes all powers incidental and consequential to that power. It is also settled law that on the principle that a contemnor

ought not to be permitted to enjoy or pay the fruits of his contempt, the Court is entitled to give appropriate directions for remedying and rectifying things done in violation of its orders. It has also been held that if the offending conduct has caused loss or hardship, this Court will have jurisdiction to direct suitable compensation (monetary or otherwise in the contempt proceedings itself). (**Delhi Development Authority v. Skipper Construction Company (P) Ltd.**³, **Chiranji Lal and another v. Ajay Kumar Sood**⁴, **Nazamunnissa Shaukat Ali and another v. Municipal Corporation of Greater Bombay and others**⁵ and **T.Ramadas v. Collector and D.M, Hyderabad**⁶).

45. In my opinion, this is a fit case to award a sum of Rs. 1,00,000/- lakh (Rupees one lakh only) each to the petitioners to be paid by 1st respondent as part compensation for loss caused to them by the 1st respondent. This shall be in addition to any compensation which petitioners may be granted by a competent civil court against the respondents and the Vijayawada Municipal Corporation.

46. Accordingly, this Contempt Case is allowed; the 1st respondent and 2nd respondent are both found guilty of showing contempt towards the orders passed by this Court on 21-07-2016 in W.P.M.P.No.29755 of 2016 in W.P.No.24153 of 2016; the 1st respondent is held guilty of dispossessing the petitioners physically from their properties in violation of the said order acting on the instructions of the

³ 1996 (4) SCC 622

⁴ (1997) 11 SCC 336

⁵ 1990 Cri. L. J. 619

⁶ 1998 AIHC 553 (AP) (DB)

2nd respondent; the 1st respondent is sentenced to suffer two (02) months Simple Imprisonment and with fine of Rs.2,000/- (Rupees Two Thousand only) and there shall be an entry in the Service Register about his misconduct in disobeying the Court orders referred to above shall be made. He shall also pay compensation from his own funds of Rs.1,00,000/- (Rupees One Lakh only) each to the petitioners for demolishing their structures by violating this Court's orders. The sentence of imprisonment imposed on the 1st respondent is suspended for a period of two (02) months. The petitioners shall deposit subsistence allowance @ Rs.300/- (Rupees Three Hundred only) per day within six (06) weeks. The 2nd respondent is warned to be more careful in future and show respect to the Court orders.

47. This order shall be communicated to the Chief Secretary, State of Andhra Pradesh at Velagapudi for considering initiation of disciplinary action against 1st respondent.

48. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 07-03-2018

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