

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

CONTEMPT CASE No.1880 of 2016

ORDER :

This Contempt Case is filed alleging wilful disobedience of the order dt.9.8.2016 in W.P.M.P.No.33202 of 2016 in W.P.No.26822 of 2016.

2. The petitioners were owning premises bearing D.No.41-21-61 in Sy.No.301/B, Block No.10/26 of extent 86 sq.yds and D.No.41-21-26 in Sy.No.301/B, Block No.10/26 of extent 88 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.16902 of 2016.

4. On 27-05-2016, this Court, after hearing both sides, passed an interim order staying the demolition/eviction of petitioners from their respective properties.

5. Petitioners contend that this order copy was despatched on 27.5.2016 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. On 28.7.2016, the said interim order was extended until further orders.

DEMOLITION ON 2.8.2016 IN VIOLATION OF INTERIM ORDER IN W.P.NO.16902 OF 2016

7. Suddenly on 2.8.2016 at about 01.30 am, according to petitioners, the structures in the property owned by them were demolished in violation of the order dt.27-05-2016 passed by this Court in W.P.No.16902 of 2016.

W.P.No.26882 of 2016

8. Petitioners were then forced to file W.P.No.26882 of 2016 to protect their possession of the property and sought a declaration that the demolition of their houses by the Vijayawada Municipal Corporation was in violation of the order dt.27.5.2016 passed by this Court in W.P.No.16902 of 2016 and sought a direction to respondents not to dispossess or take over physical possession of their house properties.

9. They also filed W.P.M.P.No.33202 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 9.8.2016, this Court granted interim order in the said application.

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11. Petitioners contend that inspite of the above interim order passed on 9.8.2016, the respondents *forcibly took over physical possession* of the premises and laid road over their land by violating the orders passed by this Court. Therefore they filed the present Contempt case against the respondents.

12. It is specifically contended that 1st petitioner's son tried to show the Court's interim order dt.9.8.2016 to the officials of 1st respondent at the time of eviction of petitioners, but the 3rd respondent, who was on duty, highhandedly caught hold of the neck of the son of the 1st petitioner and took him away from the premises. It is alleged that the respondents openly proclaimed that no Court will stop them from their activity and that they have high influence even if anything is filed in the Court. It is alleged by petitioners that the road was laid on their property in violation of the interim orders by respondent no.s 1 and 2 with the support of the 3rd respondent.

13. Notice before admission was ordered to respondents on 10.3.2017. Sri R.Sudheer, counsel for 1st respondent took notice on 7.4.2017 and sought time to file a counter affidavit. The case was then adjourned to 21.4.2017, 26.4.2017, 27.4.2017, and 24.8.2017.

14. On that day it was informed that the 1st respondent was appointed as District Collector, Anantapur. So the Registry was directed to issue to him notice describing him as District Collector, Anantapur.

15. The case then appeared on 7.7.2017 and was adjourned to 14.7.2017. Next it was listed on 4.8.2017 and adjourned by one week. On 11.8.2017, the Government Pleader for Revenue took notice for 2nd respondent and the Government Pleader for Home took notice for 3rd respondent. The case was adjourned for one week to enable the respondents to file counter affidavits.

16. As no counter affidavit was filed even on 18.8.2017, as a last chance time was granted to 24.8.2017 to file counter affidavits to all respondents making it clear that if no counter affidavit is filed, the matter will be heard and decided exparte since already time had been granted thrice.

17. On 24.8.2017 since no counter was filed by 1st respondent, notice in Form-I was issued to him and matter was directed to be listed after 4 weeks.

18. On 22.9.2017, the 1st respondent appeared. The case was adjourned to 6.10.2017 and he was directed to appear on that day.

19. On 11.10.2017, the 1st respondent filed counter affidavit. Prior thereto, the 2nd respondent had filed counter affidavit on 27.3.2017. But no counter affidavit has been filed by the G.P. for Home who had taken notice for the 3rd respondent. Since ample time was already granted for filing counter affidavits, request for grant of further time made on 9.3.2018 by the Government Pleader for Home was not rejected. Arguments were heard and orders were reserved on 9.3.2018.

THE STAND OF 1ST RESPONDENT IN HIS COUNTER AFFIDAVIT

20. 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.

21. No date is however mentioned in the counter affidavit as to when a 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 proves that he got the road laid on petitioners' properties after this Court granted the interim order 9.8.2016 in WPMP.No.33202 of 2016 in WP.No.26822 of 2016.

22. 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 said benefits.

23. The 1st respondent justifies his violation of the Court order 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 property and lay a road in violation of the Court order and that this was in larger public interest.

24. It is also stated that subsequently the Municipal Council of Vijayawada Municipal Corporation approved through resolution dt.15-09-2017 for grant of TDR bonds @ 1:2 to the extent of site which petitioners' lost and for allotment of housing flats under JNNURM scheme; 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.

25. It is also asserted that there was a *written* understanding between the Corporation and petitioners about the benefits which are 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.

26. However, the 1st respondent did not file before this Court any such written understanding between the parties along with his counter affidavit.

27. 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

28. The 2nd respondent filed a counter-affidavit stating that the petitioners' land abuts the river Krishna , that 1st petitioner was an assignee of the site in her occupation and the 2nd petitioner bought his site from an assignee in violation of provisions of the A.P.Assigned lands (Prohibition of Transfer) Act, 1977.

29. According to 2nd respondent, the lands are flood prone every year and Government decided to entrust to 1st respondent duty of smoothly conducting the Pushkarams and the Municipal authorities decided to remove the petitioners houses and lay a road for plying emergency vehicles and for free movement of vehicles.

30. The 2nd respondent further stated that 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 the people by refusing to give up their land.

31. Though this Court got a report on 7.12.2017 from the Meropolitan Session judge, Vijayawada 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 order dt.9.8.2016 in W.P.M.P.No.33202 of 2016 in W.P.No.26822 of 2016, the said report is not of much value. The question when the dispossession of petitioners took place was not referred to the said Court for submission of it's report.

32. The crux of the question in the Contempt Case is *“whether there is wilful disobedience of the order dt.9.8.2016 in W.P.M.P.No.33202 of 2016 in W.P.No.26822 of 2016?”*

33. It is not in dispute that there is an order granted by this Court on 27-05-2016 in W.P.No.16902 of 2016 filed by petitioners restraining the respondents from demolishing or evicting petitioners from their houses except in accordance with law.

34. It is the admitted case of 1st respondent in the enquiry before the Metropolitan Sessions Judge, Vijayawada that he demolished the structures between 3.5.2016 and 2.7.2016. He did not state specifically when actually the structure of the petitioners were demolished.

35. Thereafter this Court passed the order on 9.8.2016 in W.P.M.P.33202 of 2016 in WP.No.26882 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.

36. The petitioners allege in this CC that after the order was passed on 9.8.2016 by this Court they were dispossessed in spite of the said order restraining the respondents from physically dispossessing them and a road was laid over the land with the support of 3rd respondent.

37. This allegation of petitioners is not denied specifically by respondents.

38. Though counsel for 1st respondent contended that petitioners did not give date of their dispossession and so the contempt case should be dismissed. This plea cannot be countenanced since petitioners' specific plea that it occurred after the interim order was granted on 9.8.2016 was not specifically denied by respondents, and it is in fact admitted that officials of 1st respondent did dispossess them and laid a road on petitioners' properties.

39. It is also not the case of respondents that the road was laid on petitioners' property before the Court passed order on 9.8.2016 in W.P.M.P.No.33202 of 2016 in W.P.No.26822 of 2016.

40. Even if the 1st petitioner was an assignee, if her land is required for a public purpose, she is entitled to be paid market value thereof as per the decision of the larger Bench of this Court in **LAO-cum-RDO, Chevella Division v. Mekala Pandu**.¹ This legal position is not disputed by 2nd respondent. He also did not dispute the legal position that if the Municipal Corporation wanted any citizen's land it must purchase it under an agreement with him (Sec.146 of the GHMC, Act,1955) or acquire it under the Land Acquisition law (Sec.147 of the GHMC, Act,1955). Also at no point of time admittedly any notice had been given to 2nd petitioner under the said Act till date. So without following due process of law, the 1st respondent could not demolished the structures of petitioners or dispossessed them.

¹ (2004) 2 ALD 451

41. Also it is not the case of the 2nd respondent that in August 2016 or before that month in that year, there were any floods. So this excuse given by respondents also cannot be accepted.

42. It is not the case of the respondents that they were not aware that there would be Pushkarams in Krishna River before July,2016 and this knowledge came to them just at that time. There was thus no tearing hurry to demolish petitioners' structures or grab their property as they did.

43. 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.16902 of 2016 and obtained an interim order from this Court not to demolish/evict on 27.5.2016, and (ii) W.P.No.26822 of 2016 in this Court and obtained another interim order on 9.8.2016 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 later. It is certainly not consistent with the normal human conduct which is expected of the petitioners. The alleged written agreement between the parties has not been filed by 1st respondent with his counter affidavit.

44. Even otherwise, how this interim order dt.9.8.2016 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. But for the reasons known for 1st respondent, he did not do so.

45. 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.9.8.2016 in WPMP.No. 33202 of 2016 in WP.No.26822 of 2016, it does not bind the Court. This is for the reason that as held in **D.N. Taneja v. Bhajan Lal**², 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.

46. In **Salkia Businessmen's Assn. v. Howrah Municipal Corpn**³, 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

² (1988) 3 SCC 26

³ (2001) 6 SCC 688

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 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)

47. 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.

48. 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.

49. In my considered opinion, there has been a blatant and wilful disobedience of the order dt. 9.8.2016 in W.P.M.P.No.33202 of 2016 in W.P.No.26822 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 offering to pay compensation to them.

50. 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.

51. 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, which are not genuine reasons for dispossessing them, as held by me above. 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 his utter contempt towards Court orders.

52. Coming to the 3rd respondent, no counter affidavit is filed by him though the Govt.Pleader for Home took notice on his behalf 11.8.2017 itself and on the next date when it was listed i.e on 18.8.2017, time was granted till 24.8.2017 making it clear that no further time will be granted and matter will be decided ex-parte. Also the 3rd respondent participated in the enquiry before the Metropolitan Sessions judge, Vijayawada by engaging a counsel. He cannot therefore be said to be unaware of the proceedings in the CC.

53. Since 3rd respondent did not file counter affidavit denying the allegations levelled against him by petitioners, (i.e that when 1st petitioner's son tried to show the Court's interim order dt.9.8.2016 to the officials of 1st respondent at the time of eviction of petitioners, the 3rd respondent, who was on duty, highhandedly caught hold of the neck of the son of the 1st petitioner and took him away from the premises), the allegations are accepted as true. This conduct of 3rd respondent, in abetting contempt by officials of 1st respondent in dispossessing petitioners, is therefore held to be wilful disobedience

of the interim order dt.9.8.2016 in WPMP.No.33202 of 2016 in WP No.26822 of 2016.

54. 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.**⁴, **Chiranji Lal and another v. Ajay Kumar Sood**⁵, **Nazamunnissa Shaukat Ali and another v. Municipal Corporation of Greater Bombay and others**⁶ and **T.Ramadas v. Collector and D.M, Hyderabad**⁷).

55. I therefore hold that it is a fit case to award a sum of Rs. 1 lakh (Rupees one lakh) 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.

⁴ 1996 (4) SCC 622

⁵ (1997) 11 SCC 336

⁶ 1990 Cri. L. J. 619

⁷ 1998 AIHC 553 (AP) (DB)

56. Accordingly, this Contempt Case is allowed; the respondents Nos.1 and 3 are found guilty of showing contempt towards the orders passed by this Court on 9.8.2016 in W.P.M.P.No.33202 of 2016 in W.P.No.26822 of 2016;

(i) the 1st respondent is held guilty of dispossessing the petitioners physically from their properties in violation of the said order; 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 disposing the petitioners by violating this Court's orders;

(ii) The 3rd respondent is sentenced to one month simple imprisonment and fine of Rs.2000/- fine for abetting the violation of the Court orders by officials of 1st respondent;

(iii) The sentence of imprisonment imposed on the respondent no.s 1 and 3 is suspended for a period of two (02) months; and

(iv) the petitioners shall deposit subsistence allowance @ Rs.300/- (Rupees Three Hundred only) per day within six (06) weeks for each of them.

(iv) The 2nd respondent is warned to be more careful in future and show respect to the Court orders.

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

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

JUSTICE M.S.RAMACHANDRA RAO

Date : 29-03-2018

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