

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CONTEMPT CASE Nos. 812 & 965 of 2017

Date : 08.6.2018

Between:

Mohd Ismail S/o Mohd Jahangir
r/o 5-4-742/4 & 5,
Nampally station road,
Hyderabad and another

Petitioner

And

Prem Kumar Jain S/o Chamalal Jain
57 yrs
Chairman MD of M/s Ashish Infra Developers India Pvt Ltd
601 Ashish Residency, Hyderabad and others

Respondents

The Court made the following:



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COMMON ORDER:

On 9.11.2016 the following interim order was passed.

“.....

Having regard to the apprehension expressed by the petitioners and since no assessment was made earlier, I am of the opinion that the Municipal Corporation shall undertake assessment of the impact that may likely to cause to the adjoining building, if the 4th respondent undertakes construction activity in the subject premises. The petitioners have agreed to incur the expenditure for undertaking the technical assessment.

The petitioners shall deposit an amount of Rs.20,000/- with the Zonal Commissioner, Circle-8, GHMC, Abids, Hyderabad within a period of one week from today. On such deposit, the Zonal Commissioner shall take the help of J.N.T.U Hyderabad to undertake the technical assessment of stability of the adjoining building, if the 4th respondent is permitted to undertake construction activity and shall obtain and file a report before this Court by the next date of hearing.

Learned counsel for 4th respondent submits that the 4th respondent will not undertake any digging work until a report is filed....”

2. As seen from the extracted portion of the order, there are two limbs in the order; firstly 4th respondent gave an undertaking that he will not take up digging work until report is filed; secondly on deposit of Rs.20,000/- by petitioner Zonal Commissioner should take the help of JNTU, Hyderabad to undertake technical assessment of the stability of the adjoining buildings, if 4th respondent is permitted to undertake construction activity.

3. It is alleged that even though amount was deposited, the assessment was not made and that 4th respondent continuing digging work unabated causing grave threat to adjacent buildings. Along with contempt case photographs are filed showing the Deccan Chronicle newspaper dated 16.2.2017 in the background to show as if construction activity is going on.

4. In response to the notice issued, in the counter affidavit unofficial respondent clearly stated that he has not undertaken any construction activity after the order passed by the Court, and therefore he has not violated the directions of the Court.

5. Learned counsel for petitioner emphatically argued that the photographs would disclose carrying out digging work after the interim orders, therefore, there is violation of the undertaking given to the court.

6. Learned counsel for unofficial respondents pointed out that two photographs filed showing the Deccan Chronicle newspaper in the background are not very clear about undertaking construction work, whereas one photograph would show some activity going on but that photograph does not contain in the background the Deccan Chronicle newspaper to disclose date on which said photograph was taken and that said photograph was not taken after the interim order.

7. Since a serious doubt was expressed on the veracity of the photographs to show digging activity was going on after interim order was passed, counsel for petitioner was directed to produce details from the instrument through which photographs are taken, in other words 'metadata' of instrument and matter was adjourned on 23.2.2018. Further adjournments were granted on 9.3.2018, 16.3.2018 and 4.6.2018 but so far metadata of the instrument is not produced and learned counsel for petitioner expressed inability to produce the same.

8. As noticed by the Court on 23.2.2018 from the naked view of the photographs there is difference between two photographs with Deccan Chronicle newspaper in the background and other photographs. In the two photographs with Deccan Chronicle newspaper in the background do not depict digging activity after the interim order and there is no material placed on record to controvert the stand of unofficial

respondent that the other photograph was not taken after the interim order of the court. In the absence of clear proof unofficial respondents cannot be held guilty of contempt.

9. Contempt proceedings are quasi-criminal proceedings. Only if disobedience is proved with cogent material the contemnor can be held guilty and be punished. In the absence of clear proof, when unofficial respondent categorically denied undertaking digging work after interim order and when there is serious doubt expressed about veracity of the photographs on which reliance is placed and when no material is produced to substantiate that those photographs were taken when digging activity was going on after interim order was passed, though sufficient time was granted, unofficial respondents cannot be held guilty and be punished of contempt of Court orders.

10. With reference to second limb of the interim order, inspection was conducted, inspection report was filed, and therefore there is compliance of the orders of this court.

11. For the foregoing reasons, the contempt cases are closed. Contemnors are discharged. Pending miscellaneous petitions are closed.

P NAVEEN RAO,J

DATE:08-06-2018
TVK

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