

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CONTEMPT CASE No.1134 of 2017

ORAL ORDER:

Alleging violation of the directions issued by this Court on 6.1.2017 in WPMP No. 940 of 2017 in WP No. 852 of 2017, Greater Visakapatnam Municipal Corporation (for short GVMC) filed this contempt case. For the sake of convenience, parties are referred to as they are arrayed in the writ petition.

2. Heard learned standing counsel for GVMC Sri S Lakshminarayana Reddy and Mr Prashanth representing for M/s Indus Law Firm.

3. Petitioners 1 and 2 claim to own two adjacent properties put together to an extent of 2651 sq yards equivalent to 2216.58 sq meters in Survey No. 27/1, Pothinamallayyapalem, Madharawada, Ward No.4 Zone-I, Visakapatnam. They have jointly executed Development Agreement cum General Power of Attorney in favour of third petitioner. They have applied for building permission to construct cellar for parking, ground floor and five upper floors in the area covering 1484 sq meters. On 3.8.2015 building permission was granted. In the affidavit filed in support of the writ petition, it is averred that as a consequence to the building permission granted to them, third petitioner started undertaking construction. While so, on 28.12.2015 notice was drawn under Section 450 of the GHMC Act, 1955 (for short the Act) calling upon the petitioners to explain as to why the building permission granted should not be cancelled on the allegation that petitioners are in occupation of 140 sq yards of land classified as 'Vagu Poramboku'. Petitioners filed their explanation on 6.1.2016 denying the contents of the notice. On 15.2.2016 order revoking the building permission was passed. On

service of said order, petitioners earlier filed WP No. 26705 of 2016. During the pendency of the said writ petition, the revocation order was withdrawn. Therefore, the writ petition was dismissed as having become infructuous by order dated 17.8.2016. On 6.10.2016 notice under Section 450 of the Act was issued. On 13.10.2016 petitioners filed detailed explanation. On 24.11.2016 detailed order was passed and petitioners were directed to appear in person on 30.11.2016. However, no further orders are communicated. According to petitioners by the time the writ petition was instituted, petitioners completed laying of slabs and brick work and finishing work was in progress. While so, on 30.12.2016 officials of GVMC directed the petitioners to stop construction work. Aggrieved thereby W P No. 852 of 2017 is filed.

4. When writ petition was taken up for consideration, learned standing counsel for GVMC informed the Court that petitioners have encroached into the Government land and on application submitted by petitioners, survey was ordered and corporation was awaiting the report of the surveyor. Taking note of the submissions of the learned standing counsel, by order dated 06.01.2017 made in WPMP No. 940 of 2017 in WP No. 852 of 2017, the Court passed the following order:

“Since there is a dispute regarding the encroachment into Government land, at this stage, petitioners cannot be permitted to undertake further construction. However, since no final decision is taken by the Municipal Corporation, the Corporation is also directed not to take any further course of action till survey report is furnished.”

5. GVMC alleges that in violation of the said directions of this Court, petitioners went ahead with construction activity and having noticed that construction activity was going on, notice dated 22.4.2017 was caused warning the petitioners not to undertake construction as it would be amounting to violation of the directions of the Court but petitioners did not heed to the warning compelling the GVMC to institute

this contempt case. In the contempt case paper book, GVMC enclosed copy of notice dated 22.4.2017, photographs taken on the subject premises and also a video recorded on 23.1.2017 in support of their contention that in violation of the direction of this Court not to make any further construction, construction activity was going on. A bare perusal of the photographs filed and the video would disclose that plastering and painting work is completed. On a portion of the building there is scaffolding to complete plastering and painting work. GVMC filed CA No. 717 of 2017 praying to grant leave to receive copy of the survey report submitted by the Deputy Inspector of Survey, Visakapatnam dated 12.6.2017 along with sketch and copy of proceedings of Revenue Divisional Officer dated 27.6.2017 as additional evidence. In the correspondence, the Revenue authorities alleged that petitioners encroached 92 square yards of land in Survey No. 26, which land is classified as 'Poramboku'. Learned standing counsel, therefore submits that admittedly petitioners are in occupation of 'Poramboku' land and construction is taken up on Poramboku land and, therefore, notice under Section 450 of the Act was validly issued. He would therefore emphasize that having regard to the above findings and direction issued by this Court, petitioners could not have undertaken further construction and the same amounts to willful and deliberate disobedience of the orders of this Court.

6. In response to the notice issued in the contempt case, petitioners filed separate affidavits. First and second petitioners are the owners and third petitioner is developer. According to first petitioner, as per the development agreement dated 6.1.2014, it is entirely responsibility of third petitioner to undertake construction by following norms and procedures and deliver possession of 50 % of the built up area with liberty to dispose of the balance. As per clause 28, third

petitioner indemnifies first and second petitioners against damages, costs, charges, penalties etc and as per clause 32 construction has to be made by third petitioner strictly in accordance with the approved plan. Thus, the entire construction activity rests only with the third petitioner.

7. In the counter affidavit filed on behalf of second petitioner, it is further averred that third petitioner informed petitioners 1 and 2 that construction work was stopped after the interim orders were passed and that he was only undertaking the plastering and white washing work. As petitioners 1 and 2 doubted even undertaking plastering and white washing, they requested him to seek legal advise and to act thereon. After obtaining the legal advise, he stopped further activity. It is further deposed that to ensure compliance of the interim orders, petitioners 1 and 2 inspected the subject property and noticed that no construction activity was going on. It is also averred that they have warned the third petitioner not to undertake any construction. Thus, petitioners 1 and 2 squarely shifted the blame to third petitioner. Along with the counter affidavit filed by second petitioner, photographs stated to have been taken on 21.12.2017 are enclosed to show that there is no progress in the construction activity.

8. In the counter affidavit filed by third petitioner, it is deposed that by the time interim order was passed, he had completed all the slabs and brick work. He further stated that out of plastering work, admeasuring approximately 30000 square feet required for entire building, 28000 square feet work was completed by the time interim order was passed and white washing was also done to the same extent. According to him balance plastering and white washing work of 2000 sq feet was only taken up. He justifies said action by stating that above work was entrusted to a contractor and to enable the contractor to complete his assignment, the balance work pending was allowed to be

completed. This was allowed under a bonafide impression that the issue was of encroachment of Government land and not regarding further construction. However, after obtaining legal opinion, even the further activity was stopped. Appropriate to note, at this stage, statement of third petitioner in paragraph-5, which reads, **“As such after 6.1.2017, I respectfully assert that no substantial constructions have been made except to the extent mentioned above.”** He then offers unconditional apology for undertaking remnant activity under a bonafide impression that same would not amount to construction. Thus, even as per admission of third petitioner construction activity was carried on after 6.1.2017 in violation of direction of the Court.

9. The question for consideration is whether such violation is deliberate and willful warranting initiation of proceedings of contempt and if so, whether petitioners 1 and 2 are equally responsible for allowing such construction by third petitioner?

10. It is appropriate to note that writ petition was filed by petitioners alleging interference by GVMC in construction activity. Court was informed by counsel appearing for GVMC that petitioners encroached into Government land. Thus, before examining the issue, as further construction of building was not warranted, Court has not permitted further construction while protecting the construction already made. Thus, on the face of the order dated 6.1.2017 no construction activity could be taken up by petitioners.

11. To appreciate the statement of third petitioner that only a small portion of plastering and white washing work was undertaken, following aspects are noted. According to averments of petitioners in the affidavit filed in support of the writ petition, by the time writ petition was taken up for consideration laying of slabs and brick work was completed.

There was no mention in the affidavit about completion of plastering work and undertaking white washing. This is clear from the reading of averments in paragraph 15 of writ petition. In the counter affidavit filed by third petitioner in this contempt case, he states that plastering work to an extent of 28000 sq feet as well as white washing was completed before interim order was passed. This statement of third petitioner appears to be contrary to earlier deposition as noted above.

12. According to third petitioner's assertion after interim order he had undertaken plastering and white washing to an extent of 2000 sq feet only to enable contractor to complete his assignment. This statement appears to be false. Construction activity of a larger scale than projected was made and was carried on with eyes wide open and with full knowledge of facts. It cannot be said that petitioners were not aware of consequences of such construction. 3rd Petitioner had the audacity to undertake further construction. His actions are deliberate and willful. Such conduct cannot be countenanced.

13. English language idiom says 'a picture is worth a thousand words'. A bare look at the photographs enclosed to the writ petition, it is seen that by the time said writ petition was filed, brick work was not completed leave alone plastering and white painting. Writ petition was filed on 4.1.2017 and interim order was made on 06.01.2017. Compared to these photographs, photographs and video filed by GVMC and photographs filed by petitioners along with counter affidavit would clearly point out completion of entire brick work, plastering and white washing.

14. Petitioners 1 and 2 are owners of the subject property on which construction was made. They claim to have executed development agreement cum General Power of Attorney in favour of third petitioner. Petitioners 1 and 2 by relying on clauses of development agreement seek

to contend that third petitioner alone is responsible. However, petitioners 1 and 2 admit inspection of subject premises and requested third petitioner not to make further construction.

15. Two things emerge from their affidavits. Firstly, petitioners 1 and 2 were conscious of construction work being carried out but no serious endeavor was made to stop such construction and became passive spectators. Secondly, according to their deposition, construction work was going unabated despite Court direction. As noticed earlier, according to petitioners, construction work was limited to plastering and white washing small portion. It is also not clear from their affidavits as to when they inspected the site and at what stage work was going on when they inspected the site. Petitioners 1 and 2 being joint owners of the property and parties to the writ petition they are bound by the order of the Court and must ensure its strict compliance. Their averments amount to shifting the blame on third petitioner only to escape their liability. As owners of the subject property all actions done by duly constituted attorney are binding on them.

16. The observations made by the Division Bench of this Court in CC No. 1974 of 2016 are apt to be noted. The observations made there in and reasons assigned in support of the decision would apply to the facts of this case. The Division Bench extensively reviewed the law on the jurisdiction of writ Court in contempt of Court proceedings. Division Bench observed:

“If a party who is fully in the know of the order of the Court, or is conscious and aware of the consequences and implications of the undertaking furnished by him to the Court, ignores it or acts in violation thereof, it must be held that disobedience is wilful. It may not be possible to prove the actual intention behind the act or omission. A Court can approach the question only objectively, and it may presume the intention from the act done as every man is presumed to intend the probable consequence of his act. (**N.S. Kanwar-1995 CrI.L.J 1261 P&H HC DB**). To establish contempt of court, it is sufficient to prove that the conduct was wilful and that the

contemnor knew of all the facts which made it a breach of the order. It is not necessary to prove that he appreciated that it did breach the order. (**St. Helen's Ltd. v. Transport & General Workers' Union; Adam Phones Ltd v. Goldschmidt-1994 4 All ER 486**).

While the jurisdiction exercised in cases of contempt is quasi-criminal in nature and the court must be satisfied, on the material before it, that contempt of court was in fact committed, such satisfaction may be derived from the circumstances of the case. (**Ram Autar Shukla v. Arvind Shukla-1995 Supp (2) SCC 130; Bank of India v. Vijay Transport- (2000) 8 SCC 512**). For the purposes of judging 'civil contempt', intention or mens rea is not relevant. The question is only whether the breach was on account of wilful disobedience i.e, whether it was not casual or accidental and unintentional. (**V.C. Govindaswami Mudali v. B.Subba Reddy-1986 (2) ALT 131**).

17. In the facts of this case, as noted above, whether offering apology is *bona fide* to purge the petitioners from contempt.

18. On this issue the Division Bench in CC No. 1974 of 2016 reviewed entire case law. Division Bench observed as under:

“The next question which necessitates examination is whether the apology tendered by the respondent-contemnor merits acceptance. It is no doubt true that the respondent-contemnor has sought pardon, and has tendered his unconditional apology. Section 12(1) of the Contempt of Courts Act, and the Explanation thereto, enables the Court to remit the punishment awarded for committing contempt of court on an apology being made to the satisfaction of the Court. While an apology should not be rejected if the accused makes it *bona fide* a conduct which abuses, and makes a mockery of, the judicial process of the Court must be dealt with an iron hand. (**Bal Kishan Giri v. State of U.P.,-(2014) 7 SCC 280**). An apology can neither be a defence nor a justification for an act which tantamounts to contempt of court. An apology can be accepted in cases where the conduct, for which the apology is given, is such that it can be “ignored without compromising the dignity of the court”, or it is intended to be evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow, there is no remorse, no regret, no repentance, or if it is only a device to escape the rigour of the law. Such an apology is merely a “paper apology”. (**Bal Kishan Giri**).

An apology tendered is not to be accepted as a matter of course, and the court is competent to reject the apology and impose the punishment recording reasons therefor. (**Bal Kishan Giri**). If the apology is found to be without real contrition and remorse, and to have been tendered merely as a weapon of defence, the court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward. (**Bal Kishan**

Giri; Debabrata Bandhopadhyaya v. State of W.B.; Mulk Raj v. State of Punjab- AIR 1972 SC1197, Hailakandi Bar Assn. v. State of Assam-AIR 1996 SC 1925, C. Elumalai v. A.G.L. Irudayaraj-AIR 1009 SC 2214 and Ranveer Yadav v. State of Bihar-(2010)11 SCC 493). A mere statement of apology by the contemnor before the court would hardly amount to his purging himself of contempt. The Court must be satisfied of the genuineness of the apology. If the court is so satisfied, and on this basis accepts the apology as genuine, it should pass an order holding that the contemnor has purged himself of contempt. (**Pravin C. Shah v. K.A. Mohd. Ali-(2001) 8 SCC 650**).

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An apology is not intended to operate as a universal panacea. (**M.Y. Shareef v. Judges of Nagpur High Court- AIR 1995 SC 19; Pravin C. Shah; T.N. Godavarman Thirumulpad (102) v. Ashok Khot(2006) 5 SCC 1**). It is not a weapon of defence forged to purge the guilty of the offence, but is intended to be evidence of real contrition, the consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrongdoer's power. (**Delhi Development Authority v. Skipper Construction-(1995) 5 SCC 507**). Only then is it of any avail in a court of justice. Unless that is done, not only is the tendered apology robbed of all grace but it also ceases to be a full and frank admission of a wrong done, which it is intended to be. (**Hiren Bose, Re-AIR 1969 Cal 1; Patel Rajnikant Dhulabhai-(2008) 14 SCC 561**). The apology tendered by the contemnor, to be accepted by the Court, should be a product of remorse. (**M.C. Mehta v. Union of India- (2003) 5 SCC 376**). Public interest demands that when a person has interfered with the judicial process, the judicial decision should not be pre-empted or circumvented merely by a conditional or an unconditional apology. While it is open to the Court, in an appropriate case, to accept an unconditional apology based on the factual position, dropping the proceeding of contumacious acts deliberately done, after accepting the apology offered, would be a premium for the flagrant abuse of the judicial process. (**Ram Autar Shukla-1995 Supp (2) SCC 130**).

In **L.D. Jaikwal v. State of U.P- (1984) 3 SCC 405.**, the Supreme Court observed:-

“.....We are sorry to say we cannot subscribe to the “slap—say sorry—and forget” school of thought in administration of contempt jurisprudence. Saying “sorry” does not make the person taking the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to “say” sorry—it is another to “feel” sorry.....” (emphasis supplied).

19. The photographs and video placed on record would disclose that large scale construction activity was carried on after the interim order. Third petitioner though accepts carrying on construction activity but sought to down play by involving a contractor and states carrying on construction only on a small portion of property. This clearly shows lack

of sincerity in deposing before this Court and be fair in admitting his mistake. There are no bona fides in that averment. Cumulatively, petitioners were trying to cover up their misdeeds and by assigning lame excuses seek to purge the contempt.

20. It is clear from facts on record that apology offered only to escape the consequence of deliberate and willful disobedience of the order of the Court. It does not amount to full and frank admission of wrong done. It is a paper apology made without any sincerity. It is hallowed. The conduct cannot be ignored to purge the contemnors by accepting the apology. As noted by Division Bench, the observations of Supreme Court in **Ram Autar Shukla** (cited supra) dropping the proceedings of contumacious act deliberately done after accepting apology offered would be a permission for the flagrant abuse of judicial process. Observations of Supreme Court in **L.D.Jakmal** quoted by Division Bench aptly apply to this case.

21. Having found that there was deliberate and willful disobedience of direction of the Court amounting to committing contempt of the orders and the apology offered was not sincere and *bona fide*, to give one more opportunity to rectify themselves, the matter was listed under the caption of 'for being mentioned' and counsel for petitioners were informed of *prima facie* view of the Court. Having realized that what was done by the Managing Partner of 3rd respondent herein, who holds the GPA-cum-Development Agreement executed by respondents 1 and 2, as grossly illegal to purge and mend himself, he filed affidavit deposed on 12.02.2018 expressing unconditional apology for violating orders of the Court dated 06.01.2017 made in WPMP No.940 of 2017 in WP No.852 of 2017 and prayed to condone the violation of Court order and to close the contempt proceedings. He voluntarily offered to contribute an amount of 3,00,000/- to the GVMC to be utilized for any social cause.

22. Having regard to affidavit filed by the 3rd petitioner offering unconditional apology and coming forward to contribute an amount of 3,00,000/- to the GVMC to be utilized for any social cause, learned standing counsel fairly submitted that he has nothing further to state, but requested the Court to leave open all other issues concerning subject property. On instructions, he also submitted that the money will be utilized for appropriate development activity in the area where subject property is located.

23. Having regard to the affidavit deposed by the 3rd petitioner on 12.02.2018 and voluntarily coming forward to contribute an amount of 3,00,000/-, while holding 3rd petitioner guilty of violating direction issued by the Court in WPMP No.940 of 2017 in WP No.852 of 2017 on 06.01.2017, a lenient view is taken with reference to imposing of punishment and fine of 2,000/- (Rupees two thousand only) is imposed. The 1st & 2nd petitioners are also guilty by their passive conduct and are warned to be careful in future. 3rd petitioner shall deposit 3,00,000/- (Rupees three lakh only) by way of Demand Draft, drawn in favour of Commissioner, GVMC, within a period of two weeks from today. The third petitioner shall file an affidavit enclosing photo copy of Demand Draft before the Registrar (Judicial), reporting compliance of the order of deposit of money with the Commissioner, GVMC, within three weeks from today.

24. On depositing the amount, the Commissioner, GVMC is directed to ensure that this amount is spent for development of civic amenities, such as, provision of toilets, drinking water facility and greenery in the locality in which subject building is situated. The Commissioner shall personally supervise and monitor to ensure that money is properly utilized. Such development activity should be

completed within two months from the date of deposit. It is also made clear that this order does not come in the way of respondent-Corporation taking further course of action in accordance with law. It is also open to petitioners to contest the claim of respondents on the allegation of unauthorized occupation of government land. Accordingly, Contempt Case is disposed of. All pending Miscellaneous petitions stand closed.

JUSTICE P.NAVEEN RAO

Date: 20.02.2018
tvk/kkm



HONOURABLE SRI JUSTICE P. NAVEEN RAO



CONTEMPT CASE No.1134 of 2017

Date :20.2.2018