

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Contempt Case no.1827 of 2018

ORDER:

This Contempt Case is filed, under Sections 10 to 12 of the Contempt of Courts Act, 1971, requesting to punish the respondent for disobeying and wilfully not complying with the directions in the orders, dated 11.12.2017, of this Court passed in W.P.no.2391 of 2016.

2. I have heard the submissions of *Sri Nisaruddin Ahmed Jeddy*, learned counsel appearing for the petitioner; and, of *Sri N.Ashok Kumar*, learned standing counsel appearing for the respondent. I have perused the material record.

3. To begin with, it is to be noted that the above said writ petition is filed seeking verbatim the following relief:

‘..to issue a writ, order or direction more particularly one in the nature of Writ of *Mandamus* declaring the inaction of the Respondent no.2 in taking legal action against the respondents No.3 to 10 by ensuring that the Parking place as per the approved Building permission File no.831/67/2/12/2008, be utilized by the petitioner instead of converting the same for other purposes is arbitrary and illegal and consequently issue a direction to the respondent no.2 to ensure that the petitioner be utilized the Parking slot no.3 in the Original Plan meant for parking of 9 cars and to pass such other order or orders....’

4. At the hearing of the said writ petition, it was stated on behalf of the writ petitioner that if the complaint of the writ petitioner is disposed of by the authority concerned of the GHMC, the ends of justice would be met. And, in reply, learned counsel for the respondents 1 & 2 endorsed the said submission. Recording the said submissions, the writ petition was disposed of directing the 2nd respondent to consider and

dispose of the complaint of the writ petitioner, within three weeks from the date of receipt of a copy of the order; however, in strict accordance with the procedure established by law; and communicate the decision taken thereon to the petitioner within a week thereafter. Complaining that the said orders are not wilfully complied with, the present contempt case is filed.

5. The case of the writ petitioner in support of the contempt case, in brief, is this: 'The 2nd respondent in the writ petition, i.e., the respondent herein has not complied with the directions in the orders of this Court; and, he has not communicated the decision taken, if any, to the petitioner as directed in the orders of this Court. For compliance of the orders of this Court, a time of three weeks, from the date of receipt of a copy of the order, was given to the respondents. Even though the petitioner waited for two months, no action as required has been taken by the respondents. The petitioner was constrained to issue a notice requesting the 2nd respondent to comply with the orders of this Court. The 2nd respondent did not even bother to give a reply to the notice, dated 09.02.2018, though the receipt of the said notice was acknowledged, on 12.02.2018. Hence, for not implementing the orders of this Court in letter & spirit and for disobeying the orders of this Court, the present contempt case is filed against the respondent, who is the 2nd respondent in the writ petition.'

6. The 2nd respondent in the writ petition, that is, the sole respondent herein, filed a counter affidavit denying the allegations in the affidavit of the writ petitioner and *inter alia* stating as follows:

In due compliance of the directions of this Court, the subject property was inspected by the respondent for removing the constructions

made in violation, if any, in the parking place. It was found that the entire stilt floor is maintained for parking. Except stair case, lift and watchman's room, no other construction is there in the parking place of the subject property. It seems that the dispute between petitioner and the non-official respondents is with regard to the extent of parking space sold to the petitioner. This dispute is of civil nature. The officials of the GHMC are required to remove the constructions, which are made in deviation of the building permit, and also the illegal constructions, if any, made in the parking place. But, in the instant case, there is no such illegal construction in the parking place. As there are no violations, the question of taking any action on the representation/ complaint of the petitioner did not arise. The petitioner was also present at the time of inspection. The petitioner was informed of the above facts. Since then, the petitioner had kept quiet. Later, the petitioner had issued a legal notice and filed the present contempt case. The respondent has issued a letter, dated 31.08.2018, and informed the petitioner that the GHMC has considered the representation and closed the same with the above observations. The copy of the said letter is filed along with the counter affidavit. Copies of the photographs of the stilt floor of the subject property are also filed along with the counter. The officers of the GHMC including this respondent have utmost respect for the orders of this Court. They have no intention of violating the orders of this Court. The petitioner made false allegations. Hence, the contempt case may be dismissed.

7. The petitioner filed a reply affidavit reiterating his contentions and *inter alia* stating as follows:

The Builder has paid bribes to the respondent officials to carry out illegal construction in car parking slots. The original car parking slots

are nine in number; whereas the officials of the GHMC had allowed the Builder to make a provision for 12 parking slots by deviating from the sanctioned plan. The said actions had affected the petitioner's right. The writ petition was filed requesting to issue a Writ, Order or direction more particularly one in the nature of writ of Mandamus declaring the inaction of the 2nd respondent in taking action against the non-official respondents as illegal and to ensure that the parking place is maintained as per the approved building permission. The conversion of the parking place for some other purposes is arbitrary and illegal. Therefore, the 2nd respondent is obliged to ensure that the petitioner is in a position to utilize the parking slot no.3 in the parking place that was shown in the original plan and which is meant for parking of nine cars. There is an illegally constructed water sump in the parking area. The same is not mentioned in paragraph 5 of the counter affidavit. There are admittedly 12 parking slots. The same were constructed by the Builder in collusion with the officials of the GHMC. As per the sanctioned plan, nine parking slots shall be provided. Hence, the provision made for three additional parking slots is illegal. The petitioner is unable to utilize the parking slot no.3 for want of sufficient space for parking his vehicle. The number of parking slots has been illegally increased from nine to twelve, in collusion with the officials of the GHMC. The contents of the counter affidavit filed by the respondent are false and incorrect. The photographs are not depicting anything. The photographs are not properly taken to escape from the liability.

8. The respondent also filed an additional counter affidavit. The averments in the additional counter affidavit, in brief, are as follows:

The main grievance of the petitioner is that the other owners of the flats in the building are using the parking area and that more number

of cars than permitted are being parked in the parking place and that the same is contrary to the building permit. The Corporation has no mechanism to monitor the car parking areas in the apartments. The Corporation has no power to take action against the Builder or anybody who uses the parking area for parking more number of vehicles or for a purpose other than the purpose for which it is intended to be used. In the instant case, when the Corporation inspected the subject property, there was no additional construction in the parking area except the stair case and servant room as stated in the counter. The Corporation has nothing to do in the matter. The dispute with regard to parking place can be sorted out by the petitioner with the non-official respondents. Hence, the contempt case may be dismissed.

9. I have perused the entire material record including the photographs filed by both the sides. As already noted, the operative portion of the order passed in the writ petition reads as under:

“Recording the afore-stated submissions, the Writ Petition is disposed of directing the 2nd respondent to consider and dispose of the afore-stated complaint of the petitioner, within three (03) weeks from the date of receipt of a copy of this order, in strict accordance with the procedure established by law, and communicate the decision taken thereon to the petitioner within a week thereafter.”

10. Learned counsel for the petitioner reiterated the case of the petitioner, which is already adverted to supra. Learned standing counsel appearing for the respondent, while reiterating the case pleaded by the respondent, submitted that the orders of this Court are duly complied with and that the petitioner was already informed, by a letter, dated 18.09.2014, of the Assistant City Planner that the parking plan shown in Annexure-I is an authentic plan and that the parking plan shown in Annexure-II is not valid as per the GHMC records and that the Annexure I

depicts nine parking slots apart from three scooter parking slots. Be that as it may.

11. Pursuant to the orders passed in the writ petition, admittedly, an inspection was made in the presence of the petitioner. According to the respondent, in the parking place in the stilt of the subject property there are no constructions except a stair case and watchman's room. However, the petitioner also contends that there is also a sump in the parking place. The petitioner is not disputing the existence of the said constructions. Indeed the petitioner has not sought for any relief with regard to the said constructions and it is not the case of the petitioner that the said constructions have to be removed. The case of the writ petitioner is that in the open parking place, a provision has to be made for parking nine cars by creating nine parking slots only as per the original building permit; but, the Builder had made a provision of twelve parking slots instead of nine, and that, therefore, the petitioner is finding it difficult to park his vehicle in slot no.3 allotted for parking of his vehicle. It is his case that with the increase in the number of the parking slots from nine to twelve, the size of the allotted parking slot no.3 has become smaller. The case of the respondent is that if more number of parking slots are provided than originally intended, it is a matter to be resolved between the writ petitioner on one hand and the Builder & the other flat owners on the other, and that the officials of GHMC cannot monitor such matters. It is the specific case of the respondent that if any complaints are made with regard to constructions made in deviation or in violation of the building permit, the officials of GHMC are obliged to take action; but, in the case on hand, the complaint is only with regard to providing three additional parking slots and hence, the said complaint of the petitioner is disposed of by

following the orders of this Court and that the facts are communicated to the petitioner by a letter of the Assistant City Planner. Learned Standing Counsel also submitted that if the petitioner is aggrieved of the decision taken and communicated, the petitioner has to pursue the further remedies; but, an action for contempt would not lie. The respondent submits that he has not violated the orders of this Court much less intentionally and that the contempt case is misconceived and that it is filed with deliberate false allegations and with *mala fide* intentions and that the contempt case is liable for dismissal.

12. In view of the admitted facts and as per the relevant annexure to the building permit, the Builder is required to make a provision of nine slots in the parking place for parking vehicles; but, a provision of twelve slots was made. The petitioner is not complaining against any constructions made in deviation or in violation of the building permit. The issue raised relates to mere provision of three additional parking slots in the parking place. The respondent submits that the GHMC and its officers are only obligated to deal with the complaints with regard to constructions, if any, made in deviation and in violation of the approved building permit and that the complaint of the petitioner is not with regard to any such constructions made and that the request is also not to remove the constructions like water sump and that the complaint is only with regard to provision of additional parking slots in the parking place and that it is not possible for the officers of the GHMC to constantly monitor such issues and that it is for the petitioner to seek appropriate remedy against the builder and other flat owners responsible by approaching a civil Court.

13. Admittedly, after this Court disposed of the writ petition with a direction to the respondent herein to consider and dispose of the complaint of the petitioner, the respondent had disposed of the complaint of the petitioner, that too, after making an inspection of the building in question. Further, by a letter, the necessary communication was given to the petitioner. In a contempt case no substantive relief would generally be granted. Having regard to the facts and keeping in view the contentions of the respondent this Court finds that the petitioner is not entitled to seek any substantive relief in this contempt case and that if the petitioner is aggrieved of the decision taken on his complaint, he has to pursue the remedies, which the law permits and that the present contempt case does not lie. Further, though there is delay in the disposal of the complaint of the petitioner and also in communicating the decision to the petitioner *vide* letter, dated 31.08.2018, yet, this Court is not inclined to take a serious view of the matter as the delay in the above regard does not appear to be on account of contumacious conduct on the part of the respondent herein. On the above analysis and for the reasons aforestated, this Court finds that the contempt case is liable for dismissal.

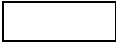
14. In the result, the contempt case is dismissed. However, liberty is reserved to the petitioner to pursue, if he so desires, the remedies, which the law permits.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

08th November, 2018
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THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI



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Date: 8th November, 2018

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