

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CONTEMPT CASE Nos. 2333 OF 2015 AND 1089 OF 2017

Dated: 20.02.2018

CC No. 2333 of 2015:

Between:

Syed Mohiuddin Ali Khan s/o late Syed Azizuddin Ali Khan,
Aged about 40 years, Occu: Business, R/o. H.No.8-1-398/A/69/1,
Janakinagar Colony, Tolichowki, Hyderabad.

.... Petitioner

And

Sri Rajesh Tiwari s/o. not known, rep.by its Princiapl Secretary,
Municipal Administration, State of Telangana, Secretariat,
Hyderabad and two others.

.... Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**CONTEMPT CASE Nos. 2333 OF 2015 AND 1089 OF 2017**

COMMON ORDER:

These two contempt cases are filed by the petitioner in WP No.30411 of 2015 and respondent Greater Hyderabad Municipal Corporation, Hyderabad respectively, alleging violation of the interim orders dated 16.09.2015 and 05.10.2015 made by this Court in Writ Petition No.30411 of 2015. For the sake of convenience parties are referred to they are arrayed in the writ petition.

2. The background facts necessary to consider the respective contentions are as under:

3. On 16.4.2014 petitioner applied for building permission to construct residential building comprising of ground and first floors in Door Nos. 1-60/30/3/136, 1-60/1/136, 1-60/30/2/136 and 1-1/136, Anjaiah Nagar, Gachibowli village, Serilingampally mandal, Ranga Reddy district.

4. Record would disclose that on 05.07.2014, respondent-Corporation passed orders rejecting the building permission. However, petitioner continued to undertake construction by excavating the cellar without leaving set backs and land required for road widening as per the master plan. On 22.10.2014, petitioner submitted representation addressed to the Assistant City Planner, Town Planning Section, Circle II, GHMC. In the said representation he informed that cellar was formed during the excavation and removing of rocks and that he is ready to close the cellar. He therefore requested to issue building permission for construction of ground and one upper floor for residential purpose. He also undertook that he would be wholly responsible if any complication would arise in future and GHMC would be at liberty to cancel the permission. On consideration of the said representation, orders were

passed on 27.10.2014 rejecting the building permission application. In the said order, it was informed that he was undertaking construction work duly occupying the road affected area and in violation of the submitted plans he has constructed cellar plus two upper floors.

5. According to petitioner, having waited for considerable time on the building permission application and as there was no rejection, by relying on the deemed provision in Section 437 of GHMC Act, 1955 he commenced construction in second week of August, 2015, laid the foundation and raised the structures "strictly in accordance with my plan" (paragraph 5 of the affidavit).

6. Further, petitioner seems to have removed the existing shops and started construction of pillars to further extend the building towards main road. This extension of pillars is stated to be affecting 200 feet of proposed master plan road.

7. It appears, person by name Mr. P.B.Venkatesh Reddy claiming to be the owner of the land in Plot No.3 complained to GHMC that petitioner is constructing building in his plot by demolishing the entire building and land abutting to Plot No.1 is Government land, therefore, requested to take action. Alleging inaction on the said representation and proceeding with the construction by petitioner, Mr. P.B.Venkatesh Reddy filed WP No. 29679 of 2015. This Court by order dated 11th September, 2015, taking note of the contention of the petitioner, directed respondents 3 to 5 (officials of GHMC) to ensure no constructions are being taken up by 7th respondent (petitioner herein) without having valid permission. It is further stated that petitioner in W.P.No.29679 of 2015 filed CC No. 2073 of 2015 alleging violation of the directions of the Court and said contempt case is also pending.

8. Alleging that though no orders are passed rejecting the building permission, the respondent authorities are threatening to demolish and/or stopping construction undertaken by him strictly in accordance with the building plan, he instituted W.P.No.30411 of 2015. On 16th September, 2015 when matter was taken up for consideration learned standing counsel for GHMC Mr Sampath Prabhakar Reddy requested adjournment to obtain instructions. While adjourning the matter, Court directed, "In the mean time, both the parties are directed to maintain status quo, obtaining as on today." On 5th October, 2015, the Court passed the following order:

"It is represented that W.P.No. 29679 of 2015 is filed concerning the same subject property and both the matters should be heard together.

Having regard to the said submissions, post both the writ petitions on 27.10.2015 in the motion list.

In the meantime, the parties are directed to maintain status quo obtaining as on today. The petitioner shall not undertake any further construction. The respondent Municipal Corporation shall not take any coercive action against the petitioner".

9. To complete narration of facts, notice under Sections 452 (1) and 461 (1) of the Act, 1955 were issued on 10.9.2015 and as petitioner refused to receive the said notices, they were stated to have been pasted on the wall. Instead of stopping the construction pursuant to the notices, petitioner proceeded with further construction and was fixing centering work to lay slab. On 22.9.2015 taking the protection from the local police, the staff of GHMC removed the centering work and RCC pillars which were constructed.

10. As the construction was going unabated, notice under Section 452 (2) of the Act, 1955 was issued on 23.10.2015. As there was no response to the notice issued under Section 452(2), notice under Section 636 was issued on 28.10.2015 directing the petitioner to remove the unauthorized constructions raised in second and third floors. As

there was no response to the said notices, officials of GHMC undertook demolition of the portion of the construction made in violation of the Court directions.

11. Alleging violation of orders dated 16.9.2015 and 5.10.2015 by other party, these two contempt cases are filed, respectively.

12. In response to the notice in CC No. 2333 of 2015, the Commissioner of GHMC Mr Janardhan Reddy, IAS, filed affidavit narrating the history of events noted above. According to averments in the said affidavit, in violation of Court directions, petitioner undertook construction of building unabated. Further, though building permission applied was for ground plus first floor, petitioner not only constructed cellar but in all raised five floors plus pent house, made it a commercial complex. According to original building plan, petitioner intended to construct total area of 1152 sq feet, whereas he has constructed 15171 sq feet. He would further submit that there were two conflicting orders of the Court i.e., in W P No. 30411 of 2015 Court directed maintenance of status quo by both parties and in W P No. 29679 of 2015 Court directed GHMC officials to ensure that no constructions are made by petitioner therein without having valid permission. Thus, in bonafide, the illegal constructions made without building permission and in violation of the Court directions were removed. GHMC filed CC No. 1089 of 2017 alleging violation of directions of this Court dated 16.9.2015 and 5.10.2015 by petitioner.

13. In response to the notice issued in CC 1089 of 2017 petitioner filed affidavit deposed on 3.11.2017. In paragraph 2 of the affidavit, he offers unconditional apology for violating orders of the Court. He avers that he has no legal knowledge or expertise and was dependent on legal experts/counsel and that he was advised that status quo order

is against GHMC. He further deposes that one of the officials of GHMC advised him that as the building permission application is not rejected, it amounts to deemed permission, therefore, he collected construction material and dug up the foundation and started construction of the building. He would say that on the advice of Assistant City Planner, he started making construction by obtaining loans from all sources and thereafter applied for regularization of the building on 1.12.2015. He would say as under:

“.....When I approached another counsel for opinion, I came to know that I have violated the orders of this Hon'ble Court. This violation of the orders happened only due to the wrong understanding and advice only. It is not willful not wanton. Having known the meaning and consequences thereof, a lay man like me would have not invested all my family savings and huge loan amounts into the construction of the present building. I was very badly misled to the present situation. I once again tender my sincere unconditional apology before this Hon'ble Court and request to pardon me in these circumstances.

I therefore request this Hon'ble Court to kindly accept my sincere unconditional apology and pardon me for the disobedience of the orders dated 23.9.2015 and 5.10.2015 in WP No. 30411 of 2015 and pass any such other order or further order or orders as deem fit and proper in the interest of justice and circumstances of the case.”

14. Averments in the affidavit filed by petitioner clearly substantiate allegation of GHMC. Petitioner admits of constructions made by him after interim orders were passed and contrary to interim directions.

15. Along with additional affidavit deposed by Commissioner, GHMC Mr Janardhan Reddy dated 14.11.2017 photographs taken on 13.11.2017 are enclosed at pages 51 to 53 (Annexure P-19). These photographs would show construction of ground floor, four upper floors and pent house and would also show interior work going on in the subject premises such as ceiling, fixing of air conditioners etc. Thus, even now construction is in progress.

16. Record would disclose that demolition undertaken by GHMC were on constructions made after interim orders passed by this Court. The order of status quo was applicable to both sides. Thus, petitioner could not have undertaken construction far more than building permission applied, in the guise of interim order of *status quo* and would allege violation of directions by GHMC in removing constructions made after interim order. Further, in WPMP No. 38452 of 2015 in WP 29679 of 2015 authorities of GHMC were directed by this Court to ensure that no constructions are made by 7th respondent/petitioner herein and alleging violation of said directions, petitioner therein filed CC 2073 of 2015. Thus, it cannot be said that respondent authorities have violated directions of the Court, much less, willful and deliberate, warranting initiation of contempt proceedings against respondents in CC 2333 of 2015.

17. As briefly noted above, building permission applied by petitioner was to construct ground plus first floor to a total extent of 1152 sq feet for residential purpose. According to petitioner, he commenced construction of building in August, 2015, after waiting for considerable time for response to building permission application. However, record would disclose that building permission application was rejected first time on 5.7.2014 and second time on 27.10.2014. Before order of rejection was passed on 27.10.2014 when inspection was conducted by GHMC Officials they noticed construction of cellar and two floors, whereas in the affidavit filed in support of writ petition, petitioner stated that as building permission application was not rejected, he commenced construction in August, 2015.

18. Various steps taken by GHMC as narrated in the affidavit deposed by the Commissioner are not controverted by the petitioner and on the contrary, he filed a simple affidavit admitting that constructions

were made after the directions of the Court and sought for apology. The material placed on record would also disclose that under the guise of interim orders, petitioner went on constructing and has ultimately constructed approximately 14 times more space than the original building plan. In the facts of this case, claim of petitioner that he was under *bona fide* impression to undertake construction is stated to be rejected. He was taking shelter on alleged legal advice and suggestions of officials of the GHMC without naming them only to cover up his actions. Construction was made with eyes wide open and with clear understanding of what he was doing. The way he was presenting building permission applications, pursuing litigation and submitting application for regularization would demonstrate that petitioner was not ignorant of legal position as sought to be projected. Petitioner has the audacity to undertake construction far more than original plan and then apply for regularization. With impunity he went ahead with construction. It is a case of passive disobedience, an open defiance and made a mockery of order of the Court. His actions are deliberate and willful with full knowledge of consequences. Such conduct of parties to litigation cannot be countenanced. Petitioner is guilty of contempt of the orders dated 16.09.2015 and 05.10.2015 made by this Court in Writ Petition No.30411 of 2015.

19. At this stage, it is appropriate to note the observations made by the Division Bench of this Court in CC No. 1974 of 2016. 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 willful 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**).

20. Next issue for consideration is whether the apology offered by the petitioner requires to be accepted and petitioner be let off. Principle of law is well settled that court need not purge contemnor merely because he offers unconditional apology. To accept apology, what is required to be seen is whether violation of Court orders was unintentional; the apology offered is bonafide but not a defence or justification of contemptuous act.

21. On this issue also, the Division Bench in C.C. 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**).

.....

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).

22. In the facts of this case also, it is seen that apology offered is not sincere and *bona fide*. It is clear from facts on record that it is made 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. 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.

23. On the need to punish a contemnor, the Division Bench further held:

“It is not only the *power* but the *duty* of the Court to uphold and maintain the dignity of Courts and the majesty of law which may call for the extreme step of punishing the person for contempt of court. For proper administration of justice, and to ensure due compliance with the orders passed by it, the Court would not hesitate in wielding the potent weapon of contempt. (**Patel Rajnikant Dhulabhai**⁶). The summary jurisdiction, exercised by Superior Courts, in punishing contempt of their authority exists in order to prevent interference with the course of justice; to maintain the authority of law as is administered in the Court; and thereby protect the public interest in ensuring the purity of administration of justice (**Hira Lal Dixit v. State of U.P.**¹).

While awarding sentence on a contemnor, the Court does so to uphold the majesty of the law and to ensure that the unflinching faith of people in Courts remains intact. If the guilty are let off, and their sentence remitted on grounds of mercy, people would lose faith in the administration of justice. The Court is duty-bound to award proper punishment to uphold the rule of law, however high the person may be. (**J. Vasudevan v. T.R. Dhananjaya**²). There cannot be any laxity, as otherwise law courts would render their orders to utter mockery. Tolerance of law courts there is, but not without limits and only upto a point and not beyond. (**Anil Ratan Sarkar**⁵). The law should not be seen to sit by limply, while

¹ AIR 1954 SC 743

² (1995) 6 SCC 249

those who defy it go free and those who seek its protection lose hope. (**Jennison v. Baker**³).”

24. Primary and essential requirements of a community is development of proper infrastructure, such as laying of roads, construction of drainage system and provision of all other civic amenities such as drinking water, sanitation, electrification etc and includes taking care of future needs of the community. Thus, urban planning is in-built into systematic development of the community. It envisages future inflow of people into developed /developing community and accordingly plans future needs such as further establishment of roads, drainage system and all other civic amenities. Rules/Regulations are formulated to ensure systematic development of the community. Urban planning also envisages how and in what manner construction can be made, identification of localities where commercial, residential, recreational facilities can be created or allowed.

25. Though, individual has right to enjoy his property, but this right is circumscribed by overall societal requirements. Thus, whenever a property owner intends to develop his property, primary requirement is to first assess building norms, prepare his plans for development of his property in terms of building norms prescribed, apply for building permission and can undertake construction on his property after permission is obtained within parameters of the permission granted.

26. Any deviation in the requirements of building regulations/rules or violation of building permission granted must be viewed seriously as it has a serious impact on the overall development of the community and has direct impact on the rights of other citizens. Thus, the right of the individual to develop his property is subject to greater rights of other citizens living in the community who also have

³ 1972 (1) All.E.R. 997

right to enjoy their life as that of the property owner. In other words, every member in the community is cast upon duty to ensure compliance of the regulations made for systematic development of the community. Considering the conduct of the contemnor from the above stand point, the conclusion is irresistible. The conduct of contemnor is willful, deliberate and his apology is not sincere and honest.

27. Having found that there was deliberate and willful disobedience of direction of the Court amounting to committing contempt of the orders and apology offered was not sincere and *bona fide*, to give one more opportunity to rectify his conduct, matters were listed under the caption of 'for being mentioned' and petitioner was informed of *prima facie* view of the Court. Having realized that what was done by him was in violation of directions, petitioner filed affidavit deposed on 12.02.2018 accepting in clear terms that he violated the orders of the Court and tendered sincere and unconditional apology and prayed to pardon him. Further, to mend himself and to purge he voluntarily offered to contribute an amount of 1,00,000/- to the GHMC to be utilized for community development.

28. Having regard to the affidavit filed by the contemnor coming forward to contribute an amount of 1,00,000/- to the GHMC, learned standing counsel fairly submitted that he has nothing further to state, but requested the Court to leave open all other issues of illegal/unauthorized construction made by the contemnor. On instructions, he also submitted that the money will be utilized for development of greenery in the area in which subject property is situated.

29. Taking note of the affidavit deposed by the contemnor on 12.02.2018 and expressing desire to contribute an amount of

1,00,000/- for development of civic amenities in the locality and fair submission of learned standing counsel, while holding contemnor guilty of violating directions issued by the Court in W.P.No.30411 of 2015 on 29.09.2015 and 05.10.2015, a lenient view is taken with reference to punishment and fine of 2,000/- (Rupees two thousand only) is imposed. The contemnor shall deposit 1,00,000/- (Rupees one lakh only) by way of Demand Draft, drawn in favour of Commissioner, GHMC, within one week from today. On depositing such amount, the Joint-Commissioner concerned shall ensure that said amount is spent for development of greenery in the locality in which subject property is situated and shall accordingly report to the Commissioner, GHMC. The Commissioner shall monitor proper spending of money for social cause. 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 on alleged illegal constructions made by the writ petitioner. Accordingly, Contempt Case No 1089 of 2017 is disposed of. The contemnor shall file an affidavit enclosing phot copy of Demand Draft before the Registrar (Judicial), reporting compliance of the order of deposit of money with the Commissioner, GHMC, within two weeks from today.

30. In C.C. No 2333 of 2015 no contempt is made out against respondents and they are accordingly discharged, and contempt is closed. All pending Miscellaneous petitions stand closed.

JUSTICE P.NAVEEN RAO

Date:20.02.2018
Tvkk/kkm

THE HON'BLE SRI JUSTICE P. NAVEEN RAO



CONTEMPT CASE Nos. 2333 OF 2015 AND 1089 OF 2017

Dated: 20.02.2018