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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 255/2018, CM No. 13794/2018**

RAAJ MUTTREJA

..... Petitioner

Through: Mr. Vaibhav P. Shukla and Mr. Vivek
S., Advs. with petitioner in person.

versus

GURKRIPAL SINGH & ORS

..... Respondents

Through: Mr. Varun Nischal, Adv. for R1 & R2
Mr. Dhanesh Relan, Standing
Counsel for DDA with Ms. Komal
Sorout and Ms. Mrinalini Sharma,
Advs. for DDA
SI Pawan Kumar PS Kalkaji.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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10.04.2018

CM No. 13794/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CONT.CAS(C) 255/2018

1. The present contempt petition has been filed by the petitioner with the following prayers:

“In view of the above said facts and submissions, it is most respectfully prayed to this Hon’ble Court to:

a) *Initiate contempt proceedings against the contemnors for wilfully and deliberately disobeying the order dated 21.07.2017 passed in W.P. (C) No. 6168/2017 and consequently order dated 31.07.2017 passed in W.P. (C) No. 6527 of 2017 of this Hon’ble Court and punish the contemnors with the maximum possible sentence as permissible under law;*

- b) *Restore status quo ante i.e. to reconstruct the pleas and fences as they existed on 18.07.2017 i.e. on the date of SDM, Kalkaji passed the illegal demolition order;*
- c) *Direct the contemnors to make good/compensate the economic loss and mental torture suffered by the petitioner herein for the contumacious acts of the contemnors and;*
- d) *Pass any other order/s as this Hon'ble Court deems fit and proper in the facts and circumstances of this case. Any for this act of kindness the petitioner as in duty bound shall ever day."*

2. The facts as noted from the contempt petition are that an order dated July 18, 2017 was passed by the SDM, Kalkaji with regard to Khasra No.542, Village Baharpur, Kalkaji, New Delhi and Khasra No.576, Village Baharpur, Kalkaji, New Delhi. Vide the said order the SDM Kalkaji directed the removing of the fencing by Mr. Raaj Muttreja the petitioner herein in Khasra No.542 and similarly by Mr. Pankaj Tandon in Khasra No.576. Mr. Pankaj Tandon had filed a W.P. (C) 6168/2017 titled as ***Pankaj Tandon & Ors. vs. SDM (Kalkaji) & Ors.*** before this Court. This Court noted the fact that the petitioners therein were granted permission to fence their property in Khasra No.576. This Court also noting that the impugned order was passed without an opportunity to the petitioner to be heard, had remanded the matter back to the SDM (Kalkaji) for fresh hearing. The Court had also directed the petitioners to maintain status quo. It is the case of the petitioner and also contended by his counsel that on July 28, 2017, it was represented to the concerned SHO/SDM that this Court had set aside the order dated July 18, 2017 and requested the officer not to take any coercive action and comply with the aforesaid order as any non-compliance will be construed Contempt of this Court. There is no dispute that the

petitioner himself has filed W.P. (C) 6527/2017 subsequently, which had come up for hearing on July 31, 2017.

3. During the hearing, the learned counsel for the petitioner had relied upon the order passed by this Court in W.P. (C) 6168/2017 titled as ***Pankaj Tandon & Ors. vs. SDM (Kalkaji) & Ors.*** Suffice to state, on parity, the Court had granted a similar benefit to the petitioner herein, inasmuch remanded the matter back to SDM (Kalkaji). It may be stated here that the Court had noted the fact that the fencing done by the petitioner has been removed. I also note the Court had also directed that status quo shall be maintained with respect to the land in question. It is contended by the learned counsel for the petitioner that this Court having decided the issue with regard to the impugned order dated July 18, 2017, and set aside the same, the same must be construed as an order in favour of the petitioner as well, even though in a writ petition filed by ***Pankaj Tandon & Ors. vs. SDM (Kalkaji) & Ors.*** W.P (C) 6168/2017. Learned counsel for the petitioner states, this fact has been brought to the notice of the concerned SHO and SDM on July 28, 2017. He states that the removal of the fencing on July 29, 2017 amounts to violating the order of this Court on July 21, 2017. He would rely upon the judgment of the Bombay High Court in the case of ***Legrand (India) Private Ltd. Vs. UOI 2007 (216) E.L.T. 678 (Bomb.)*** to contend that as an issue of law has been decided, the said judgment shall be equally applicable to similarly placed persons. Otherwise, the same would amount the contempt of Court.

4. On the other hand, learned counsel appearing for the respondents would submit that the Court while deciding the writ petition filed by Mr. Pankaj Tandon was conscious of the fact that Mr. Pankaj Tandon was

aggrieved by the action of the SDM recalling the permission granted to them to fence their property at Khasra No.576 and not at khasra no. 542.

5. In other words, it is the submission that the judgment dated July 21, 2017 in W.P. (C) 6168/2017 must be read to enure to the benefit of the petitioner therein and not to the petitioner herein. That apart, this Court while deciding the writ petition filed by the petitioner herein has noted the submission made by the learned counsel for the petitioner that the fencing done by the petitioner has been removed. In fact, a submission was made by the counsel for the petitioner reserving right of the petitioner to take appropriate remedies in that regard including seeking compensation. Under such circumstances, the fencing having been removed on July 29, 2017, the same cannot be construed as a violation of order passed in the writ petition filed by Mr. Tandon on July 21, 2017. He reiterates, the status quo directed on July 31, 2017 has not been disturbed.

6. Having heard learned counsel for the parties, no doubt the order dated July 18, 2017 relates to Khasra Nos. being 542 and 576, but the W.P. (C) 6168/2017 was filed by Mr. Pankaj Tandon, with regard to Khasra No.576. This fact is also noted by the Court in para 3 of the order. The said order must be read to mean that the order dated July 21, 2017 shall enure to the benefit of Mr. Pankaj Tandon only and not to the petitioner herein. Even otherwise, I find the petitioner had filed separate petition seeking parity qua the order passed in the writ petition filed by Mr. Tandon i.e W.P.(C) No. 6168/2017. The writ petition was disposed of giving benefit of the order passed in W.P.(C) 6168/2017. That apart, the Court had also noted the fact that the fencing done by the petitioner has been removed. It had also directed maintenance of status quo.

7. The Court had kept all rights and contentions of the petitioner open including the right to claim compensation. The status quo as granted by the Court was as of July 31, 2017. It is not the case of the petitioner that the status quo of July 31, 2017 has been violated. It was the understanding of the petitioner that order passed in writ petition of Mr. Pankaj Tandon shall not enure to his benefit. Otherwise there was no occasion for the petitioner to file a fresh petition. He could have very well filed a contempt petition. Insofar as the reliance placed by the learned counsel for the petitioner on the judgment of the Supreme Court in the case of *Legrand (India) Private Ltd. (supra)* wherein the Bombay High Court had relied upon the judgment of the Supreme Court in the case of *East India Commercial Company Limited. vs. Collector of Customs, Calcutta, AIR 1962 SCR (3) 338* is concerned, the proposition of law as laid down cannot be disputed, but in view of my above discussion, in the facts of this case the same is not applicable.

8. As there was no order of stay in favour of the petitioner on July 21, 2017, because the petitioner was not a party, the present petition is without merit. The same is dismissed.

V. KAMESWAR RAO, J

APRIL 10, 2018/aky