

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Cont.P.No.1478/2017

P.Abdul Hakim,
S/o.Pichai Mohammed,
36/C/9, Kamarajar Nagar,
Sommanur, Sulur Taluk,
Coimbatore District.

... Petitioner

Versus

1.Mr.Hariharan, IAS
The District Collector
Coimbatore District,
Coimbatore.

2.Mr.Palani
The Tahsildar
Sulur Taluk, Coimbatore District.

.. Respondents

Prayer:- Contempt petition filed under section 11 of the Contempt of Courts Act, to initiate contempt proceedings against the respondents herein for their willful disobedience of the direction issued by this Court in WP.No.14958/2017 dated 14.06.2017 and punish them accordingly.

For Petitioner : Mr.S.Rajanikanth

<https://hcservices.ecourts.gov.in/hcservices> For RR1&2 : Mrs.P.Rajalakshmi, AGP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The petitioner, alleging willful disobedience and non-compliance of the order dated 14.06.2017 passed in WP.No.14958/2017, came forward to file the present contempt petition.

2 The facts leading to the present round of litigation, have been narrated in detail and in extenso in the above cited order, which is the subject matter of contempt and it is unnecessary to restate the facts once again.

3 Ms.S.Sengodi, learned counsel for the petitioner has drawn the attention of this Court to the materials placed in the typed set of documents and would submit that admittedly, the petitioner had filed a suit in OS.No.215/1995 on the file of the Court of Principal District Munsif, at Palladam against the Tahsildar, Palladam and the Collector of Coimbatore District, praying for permanent injunction, restraining the defendants therein from evicting him except under due process of law in respect of the property bearing Door No.36C/9, Kammanaickenpalayam, Kamaraj Nagar, Somanur, Karumathamaptti Village, Palladam Taluk and the suit came

to be decreed on 23.11.1995 and the defendants therein, neither taken any steps to file an application to set aside the ex parte decree nor preferred an appeal against the said decree and it has become final and as such, the decree for permanent injunction continues to be in operation. It is the further submission of the learned counsel that this Court, while disposing of the above said writ petition, has granted liberty to the petitioner to invoke the Appellate remedy u/s.10 of the Tamil Nadu Land Encroachment Act, 1905, before the Appellate Authority and till such disposal, directed the respondents therein to defer further proceedings in pursuant to the notice issued u/s.6 of the said Act and though the said order came to be passed on 14.06.2017 and was immediately informed to the respondents also, they went ahead with the demolition and completely demolished the superstructure and in this regard, the petitioner in his Appeal Memorandum submitted to the Appellate Authority, has also sought for compensation of Rs.30 Lakhs for the loss of superstructure and mental agony suffered by him and since the acts of the respondents per se are contemptuous, prays for appropriate orders to punish them.

4 *Per contra*, Mrs.P.Rajalakshmi, learned Additional

Government Pleader appearing for the respondents 1 and 2 /

<https://hcservices.ecourts.gov.in/hcservices/>

contemnors has drawn the attention of this Court to the

reply affidavit of the 2nd respondent dated 14.03.2019 and would submit that eviction process had commenced at 11.00 a.m., on 14.06.2017 and it came to an end at about 1.30 p.m., and the said official had received FAX message / communication from the office of the Government Pleader passed in WP.No.14958/2017 only at about 2.00 p.m. and by that time, the entire process of demolition was over. It is further stated that notices issued u/s.6 and 7 of the Tamil Nadu Land Encroachment Act, 1905, came to be issued to the encroachers which included the petitioner herein as early as on 02.05.2017 and 18.05.2017 respectively and despite, receipt and acknowledgment, the petitioner did not choose to vacate from the premises and therefore, action has been taken strictly in accordance with law. The learned Additional Government Pleader would also submit that the Collector of Coimbatore District - 1st respondent herein, had also dismissed the appeal filed by the petitioner vide proceedings dated 27.12.2017 in Pa.Mu.No.12107/2017/Aa2 and the ground that is now urged by the learned counsel for the petitioner in this contempt petition would revolve around adjudication on disputed questions of fact and the remedy open to the petitioner, if any, is to file a revision before the Commissioner of Land Administration, u/s.10 of the Tamil Nadu Land Encroachment Act, 1905, and also to file a suit claiming compensation and damages and hence, prays for closure of this petition.

5 The Court has considered the rival submission and also perused the materials placed before this Court.

6 No doubt, the petitioner is having the benefit of permanent injunction decree in OS.No.215/1995. A perusal of paragraph 6 of the Reply Affidavit filed by the Tahsildar, Sulur, the 2nd respondent herein, would disclose that the communication regarding the order passed by this Court in the writ petition, had reached their office only at 2.00 p.m., on 14.06.2017 and by that time, the entire process of demolition had been carried out in accordance with law. Though the learned counsel for the petitioner made a vehement submission that the fact of the said order has been informed to the Tahsildar, Sulur, immediately after passing of the order, this Court is of the considered opinion that the said point would revolve around adjudication on disputed questions of fact. It is a settled position of law that unless a clear case of contempt is made out, this Court cannot punish the contemnor/s for alleged violation and willful disobedience of the order.

7 No doubt, the petitioner is having the benefit of permanent injunction decree in OS.No.215/1995 and if the petitioner is of the view that willful disobedience of the

decree of permanent injunction has been committed by the respondents/contemnors, he is at liberty to work out his remedy in accordance with law before the Competent Forum. In the light of the stand taken in paragraph No.6 of the Reply Affidavit, it is also open to the petitioner to file appropriate suit for claiming damages and compensation before the competent Civil Court.

8 The contempt petition stands closed subject to above observations.

SD/-
ASSISTANT REGISTRAR (COMM. CASES)

HVK

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

SD/21/05/2019

To

1. The District Collector
Coimbatore District,
Coimbatore.

2. The Tahsildar,
Sulur Taluk,
Coimbatore District.